

0 No. 12348

760
United States
Court of Appeals
For the Ninth Circuit.

TOWN OF FAIRBANKS, ALASKA, a Municipal
Corporation,

Appellant.

vs.

UNITED STATES SMELTING, REFINING
AND MINING COMPANY, INC., and
CHARLES SLATER,

Appellees.

Transcript of Record

Appeal from the District Court
for the Territory of Alaska,
Fourth Division.

FILED

DEC 29 1948

PAUL P. O'BRIEN,

No. 12348

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 6032

In the Matter of the Annexation of Certain Lands
known as Slaterville, Garden Island and North
Fairbanks,

To: The Town of Fairbanks, Alaska, a municipal
corporation.

ATTORNEYS OF RECORD

COLLINS & CLASBY,
Fairbanks, Alaska,

Attorneys for Petitioner & Appellant.

JULIEN A. HURLEY,
Fairbanks, Alaska,

SOUTHALL R. PFUND,
San Francisco, California,

Attorneys for Protestants & Appellees.

In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 6032

In the Matter of

The Annexation of Certain Lands known as "Slaterville," "Garden Island" and "North Fairbanks,"

To: The Town of Fairbanks, Alaska, a Municipal Corporation.

PETITION

Comes Now the Town of Fairbanks, Alaska, a Municipal Corporation and presents this, its petition for the Annexation to the Town of Fairbanks, Alaska, of the area known as "Slaterville," "Garden Island" and "North Fairbanks," as is hereinafter more particularly described, and as a basis therefor alleges as follows:

I.

That the Town of Fairbanks, Alaska, is a municipal corporation organized and existing under and by virtue of the laws of the Territory of Alaska. That the boundaries of the Town of Fairbanks, Alaska, are set forth in the Order incorporating said Town in Cause Number 118 before the above entitled Court, filed December 9, 1903. That after incorporation there was set aside from public lands the area incorporated which was more exactly surveyed and established in 1907 by the U. S. Cadastral

engineers as U.S. Survey No. 438. That the incorporated city limits of the Town of Fairbanks, Alaska, on the north boundary thereof, was amended to include certain lands as is more particularly described in Cause No. 2539, in the District Court for the Territory of Alaska, entitled in the Matter of the Annexation of the North Addition of the Town of Fairbanks.

II.

That the following is a description by metes and bounds of the Territory sought to be annexed by this proceeding:

Beginning at a meander corner No. 1 of the plat of a survey for the proposed addition to the Townsite of Fairbanks, Alaska, dated July, 1947, said point being meander corner No. 7 of U.S. Survey No. 806, as amended April 16, 1920, and situate on the south meander line of Noyes Slough; thence meandering said Noyes Slough upstream, S. $70^{\circ}17'$ E. 418.9 ft. to meander corner No. 2; S. $78^{\circ}39'$ E. 300.0 ft. to meander corner No. 3; S. $48^{\circ}51'$ E. 258.0 ft. to meander corner No. 4; S. $26^{\circ}18'$ E. 286.0 ft. to meander corner No. 5; S. $40^{\circ}59'$ E. 152.37 ft. to meander corner No. 6; S. $30^{\circ}43'$ E. 165.0 ft. to meander corner No. 7; S. $12^{\circ}51'$ W. 50.0 ft. to meander corner No. 8; S. $34^{\circ}49'$ W. 98.5 ft. to meander corner No. 9; S. $60^{\circ}45'$ W. 84.0 ft. to meander corner No. 10; S. $74^{\circ}40'$ W. 188.0 ft. to meander corner No. 11; N. $47^{\circ}28'$ W. 32.2 ft. to meander corner No. 12; N. $83^{\circ}58'$ W. 147.4 ft. to

meander corner No. 13; N. $88^{\circ}58'$ W. 100.0 ft. to meander corner No. 14; S. $59^{\circ}56'$ W. 220.2 ft. to meander corner No. 15; S. $52^{\circ}40'$ W. 304.87 ft. to meander corner No. 16; S. $30^{\circ}51'$ W. 228.1 ft. to meander corner No. 17 at which point the meander line of Noyes Slough joins the north meander line of the Chena River; thence meandering said Chena River downstream, S. $79^{\circ}50'$ W. 305.18 ft. to meander corner No. 18; S. $68^{\circ}51'$ W. 156.65 ft. to meander corner No. 19; S. $47^{\circ}34'$ W. 233.94 ft. to meander corner No. 20; S. $40^{\circ}45'$ W. 258.25 ft. to meander corner No. 21 situate at the junction of the meander lines of the Chena River and Garden Island Slough, said meander corner No. 21 being the N.E. corner of the present Fairbanks Townsite boundary; thence meandering said Garden Island Slough downstream along the said Fairbanks Townsite boundary, N. $47^{\circ}53'$ W. 178.96 ft. to meander corner No. 22; N. $64^{\circ}19'$ W. 35.73 ft. to meander corner No. 23; N. $50^{\circ}07'$ W. 214.14 ft. to meander corner No. 24; N. $55^{\circ}35'$ W. 221.8 ft. to meander corner No. 25; N. $64^{\circ}53'$ W. 187.96 ft. to meander corner No. 26; N. $74^{\circ}24'$ W. 188.71 ft. to meander corner No. 27; S. $83^{\circ}55'$ W. 249.75 ft. to meander corner No. 28, said corner No. 28 being corner No. 5 of U.S. Survey No. 847; thence S. $47^{\circ}21'$ E. 101.64 ft. to meander corner No. 29; thence S. $10^{\circ}44'$ E. 496.32 ft. to meander corner No. 30; thence S. $10^{\circ}30'$ E. 60.06 ft. to meander corner No. 31; thence S. $17^{\circ}06'$ W. 495.0 ft. to meander corner No. 32;

said meander corner No. 32 being corner No. 4 of U.S. Survey No. 847; thence N. $49^{\circ}45'$ W. 613.8 ft. to meander corner No. 33; thence N. $49^{\circ}47'$ W. 140.02 ft. to meander corner No. 34; thence N. $32^{\circ}23'$ W. 575.12 ft. to meander corner No. 35; thence N. $48^{\circ}02'$ E. 596.35 ft. to meander corner No. 36; thence N. $25^{\circ}14'$ E. 2,368.02 ft. to meander corner No. 37; thence N. $76^{\circ}04'$ E. 524.6 ft. to meander corner No. 38; thence S. $24^{\circ}51'$ E. 533.2 ft. to meander corner No. 39; thence S. $39^{\circ}00'$ E. 198.0 ft. to meander corner No. 40; thence S. $44^{\circ}30'$ E. 554.4 ft. to meander corner No. 1 and the point of beginning, which said territory has been platted, a copy of which plat is hereto attached marked "Exhibit A." That said plat sets forth the limits and boundaries of the Territory sought to be annexed by metes and bounds and is based on actual surveys made by J. Frank Potter, an Engineer.

III.

That there are 277 inhabitants of the area above described and sought by this petition to be annexed to the Town of Fairbanks, Alaska.

IV.

There are 282 owners of substantial property interests in land or possession in land or improvements upon land in the Territory above described and sought by this petition to be annexed to the Town of Fairbanks, Alaska.

V.

That the Territory sought to be annexed as above described is contiguous to the Territory of the Town of Fairbanks, Alaska, a municipal corporation.

VI.

That the persons signing this petition constitute a majority to wit: 53 per cent of the owners of substantial property interests in land or possessory right in land or improvements upon land within the limits of the territory above described and by this petition sought to be annexed by the Town of Fairbanks, Alaska.

VII.

That the territory above described and sought to be annexed is a substantial residential area that is well developed and fast becoming fully settled. That the area is largely blocked off into streets of a nature conforming with the Town of Fairbanks and the expansion thereof. That there does not exist in said area any private right that will be injured by annexation; and that it is just and reasonable that the above described territory be annexed by the Town of Fairbanks, Alaska.

Wherefore petitioners pray that the Court:

1. Set a time and place for the hearing on this petition, providing for notice thereof as is required by law; and specify such facts in addition to these alleged herein of which the Court will require proof;

2. Enter herein, upon hearing, an order requiring an election in the manner provided by law; and

3. Upon certification following election judge and declare the territory, in this petition described, annexed to the Town of Fairbanks, Alaska.

/s/ RAY KOHLER,

Mayor, Town of Fairbanks.

/s/ JACK BOULET,

Owner of Property.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Town of
Fairbanks.

United States of America,
Territory of Alaska—ss.

Ray Kohler and Jack Boulet, being first duly sworn, each for himself and not one for the other, on oath deposes and says:

Ray Kohler: That I am the Mayor of the Town of Fairbanks, Alaska, a municipal corporation, and subscribe to this verification on behalf of said Town under authority so to do given by the Council of the Town of Fairbanks, Alaska;

Jack Boulet: That I am the owner of a substantial property interest in land within the territory to be annexed as described in the foregoing petition, and a resident and inhabitant of said territory.

That petitioners have read the within and fore-

going petition and the signatures attached thereto, know the contents thereof and believe the same to be true.

RAY KOHLER.

JACK BOULET.

Subscribed and sworn to before me this 9th day of November, 1948.

[Seal] /s/ CHAS. J. CLASBY,

Notary Public in and for the Territory of Alaska.

My commission expires:

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|------------------------|-------------------|-------------------------|-------------------------|-------------------------------|
| 1. Joe Gunning | Owner | Fairbanks | Portion Block 12 Slater | |
| | Purchase | In escrow | | |
| 2. Thos. D. Heath | Contract | 1st National Bank | Portion Block 12 Slater | Dec 12, 1947 |
| 3. Ruthellen A. Heath | Co-owner | 1st National Bank | Portion Block 12 Slater | Dec 12, 1947 |
| 4. David H. Harper | Owner | Veteran loan | Lot 11 Block 8 Slater | 1947 |
| 5. Iris Fredrickson | Owner | Recorder's office | Lot 12 Block 8 | April, 1947 |
| 6. Ivan Fredrickson | Co-owner | Recorder's office | Lot 12 Block 8 | April, 1947 |
| 7. Richard D. Meckel | Owner | Recorder's office | Lot 15 Block 8 | 1946 |
| 8. Alfred E. Lundstrom | Owner | Recorder's office | Lot 6 Block 9 | Jan 7, 1948 |
| 9. Kathryn Lundstrom | Co-owner | Recorder's office | Lot 6 Block 9 | Jan 7, 1948 |
| | Contract | | | |
| 10. Merry McAllister | Purchase | Escrow, K. Murray | Lot 12 Block 6 | May 1946 |
| 11. H. O. Vick | Owner | Recorder's office | Block 11 Lots 1 & 2 | Nov. 1947 |
| | Purchase | In escrow | | |
| 12. Louis E. Johnson | Contract | 1st National Bank | Block 3, Lots 11 & 12 | |
| 13. Nadine M. Johnson | Co-owner | 1st National Bank | Block 3, Lots 11 & 12 | |
| 14. Ed Aldrich | Owner | Recorder's records | Block 3 Lot 9 | 1942 |
| 15. A. R. Lowman | Owner | Ken Murray | Block 3 Lot 8 | |
| 16. Mrs. A. R. Lowman | Co-owner | Ken Murray | Block 3 Lot 8 | |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|--------------------------------|-------------------|----------------------------|----------------------|-------------------------------|
| 17. John B. Bell..... | Owner | Record office | Block 3 Lot 7 | 1944 |
| 18. David Johnson | Owner | Recorder's office | Block 3 Lots 5 & 6 | Aug 14, 1945 |
| 19. Sigrid Johnson | Co-owner | Recorder's office | Block 3 Lots 5 & 6 | Aug 14, 1945 |
| 20. Pat H. Willoughby..... | Owner | Bank of Fairbanks | Block 5 Lot 7 | 1947 |
| 21. Gladys Willoughby | Co-owner | Bank of Fairbanks | Block 5 Lot 7 Slater | 1947 |
| 22. Evans E. Howk..... | Owner | Record office | Block 5 Lot 8 | Mar 20, 1947 |
| 23. Margaret G. Howk..... | Co-owner | Record office | Block 5 Lot 8 | Mar 20, 1947 |
| 24. Thomas M. Roberts..... | Owner | Recorder's office | Block 8 Lot 6 | Dec. 1945 |
| 25. Samuel C. Wilhaite..... | Contract of Sale | Office K. A. Murray | Lot 10 & 11 Block 9 | May 1947 |
| 26. Mattie Belle Wilhaite..... | Contract of Sale | Office K. A. Murray Slater | | May 1947 |
| 27. David V. McKeag..... | Contract of Sale | Recorder's Office | Lot 4 & 5 Block 9 | June 1946 |
| 28. Mrs. David McKeag..... | Contract of Sale | Recorder's Office | Lot 4 & 5 Block 9 | June 1946 |
| 29. Francis G. Brown..... | Owner | Recorder's Office | Lot 13 Block 9 | Dec. 1947 |
| 30. Vera N. Brown..... | Owner | Recorder's Office | Lot 13 Block 9 | Dec. 1947 |
| 31. James A. Williams..... | Co-owner | Recorder's Office | Lots 1 & 2 Block 9 | May 1947 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|--------------------------------|-------------------|-------------------------|------------------------|-------------------------------|
| 32. Barbara Williams | Co-owner | Recorder's Office | Lots 1 & 2 Block 9 | May 1947 |
| 33. Arthur D. Johnson..... | Co-owner | 1st National Bank | Lot 1 Block 10 | June 1947 |
| 34. Mrs. Grace A. Johnson..... | Co-owner | 1st National Bank | Lot 1 Block 10 | June 1947 |
| 35. Gay A. Collins..... | Co-owner | 1st National Bank | Lot 11 Block 14 | Aug 25, 1947 |
| 36. Hilton L. Collins..... | Co-owner | 1st National Bank | Lot 11 Block 14 | Aug 25, 1947 |
| 37. Charlie S. Lee | Owner | Recorder's office | Lot 10 Block 14 | July 22, 1946 |
| 38. Ray Newman | Co-owner | Recorder's office | Lot 2 & 4 Block 10 | July 17, 1945 |
| 39. Mrs. Ray Newman..... | Co-owner | Recorder's office | Lot 2 & 4 Block 10 | July 17, 1945 |
| 40. Jonathan Vandemeer | Owner | Recorder's office | Lot 9 Block 14 | Nov. 1947 |
| 41. Herbert Brewster | Co-owner | Recorder's office | Lot 6 Block 14 | June 1946 |
| 42. Marion Brewster | Co-owner | Recorder's office | Lot 6 Block 14 | June 1946 |
| 43. W. D. Conant..... | Owner | Recorder's office | Lot 3 Block 14 | June 21, 1946 |
| 44. James J. Cleashy..... | Owner | Recorder's office | Lot 7 Block 14 | June 1946 |
| 45. Donald MacDonald | Owner | Recorder's office | West 1½ Lot 6 Block 10 | Jan. 1947 |
| 46. Roger R. Rhodes | Owner | Recorder's office | Lot 8 Block 14 | Oct. 1946 |
| 47. Emma Rhodes | Owner | Recorder's office | Lot 8 Block 14 | Oct. 1946 |
| 48. William N. Lockwood..... | Owner | Recorder's office | Lot 16 Block 9 | March 1947 |
| 49. Laura E. Lockwood..... | Owner | Recorder's office | Lot 16 Block 9 | |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|------------------------------|-------------------|-------------------------|--------------------------------------|-------------------------------|
| 50. J. W. Eastland..... | Owner | 1st National Bank | Lot 15 Block 9 | Nov. 1947 |
| 51. Naomi Eastland | Co-owner | Recorder's office | Lot 15 Block 9 | Nov. 1946 |
| 52. C. F. Heflinger..... | Owner | Recorder's office | Lot 1-3-5-8 | Aug. 1945 |
| 53. Robert A. Sanders..... | Owner | Recorder's office | Lot 5 Block 7 | Oct. 1947 |
| 54. Rudolph Johnson | Owner | Recorder's office | Lot 4 Block 7 | Sept. 1944 |
| 55. Anita Ruth Kirkland..... | Co-owner | Recorder's office | Lot 10 Block 4 | May 1947 |
| 56. August A. Johnson..... | Co-owner | Recorder's office | Lot 10 Block 4 | May 1947 |
| 57. E. W. Crafton..... | Owner | Recorder's office | Lot 20 Block 3 | April 1946 |
| 58. Mrs. E. W. Crafton..... | Co-owner | Recorder's office | Lot 20 Block 3 | April 1946 |
| 59. George Gilbertson..... | Owner | Recorder's office | Lot 3 & 4 Block 4 | Nov April 1945 |
| 60. Earl E. Cook | Co-owner | Fairbanks | Lot 7 & 8 & W $\frac{1}{2}$ 9 Blk 2 | Oct. 1939 |
| 61. Emma M. Cook | Co-owner | Fairbanks | Lot 7 & 8 & W $\frac{1}{2}$ 9 Blk 2 | Oct. 1939 |
| 62. E. I. Baggen..... | Co-owner | Fairbanks | Lot 9 & 10 & E $\frac{1}{2}$ 9 Blk 2 | June 1942 |
| 63. Mertie L. Baggen | Co-owner | Fairbanks | Lot 9 & 10 & E $\frac{1}{2}$ 9 Blk 2 | June 1942 |
| 64. F. H. Mapleton..... | Co-owner | Fairbanks | Lot 3 in Block 8 | Trustee Deed 1935 or 1936 |
| 65. John Yurkovich | Co-owner | Fairbanks | Lots 5 & 6 Block 2 | 1941 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Chil- dren | Where Recorded or Found | Description (full) | Date Acquired (comments) |
|--|-------------------|------------|--------------------------|--|----------------------------------|
| 66. Molly Yurkovich..... | Co-owner | | Fairbanks | Lots 5 & 6 Block 2 | 1941 |
| 67. Ralph B. Norris..... | Co-owner | | Fairbanks | Lot 1 in Block 8 | Tr. Deed 1936 |
| 68. Alma Lee Norris..... | Co-owner | | Fairbanks | Lot 1 in Block 8 | Tr. Deed 1936 |
| 69. Patricia James | Co-owner | | Fairbanks | Lot 4 Block 8 | April 1947 |
| 70. Floyd or Mike James | Co-owner | | Fairbanks | Lot 4 Block 8 | April 19, 1947 |
| 71. Alvin O. Bramstedt | Co-owner | | Fairbanks | Lot 1 Block 9 | Sept. 1945 |
| 72. Rosa L. Bramstedt | Co-owner | | Fairbanks | Lot 1 Block 9 | Sept. 1945 |
| 73. James Cassidy } 74. Magdalene Cassidy } | Deed | 2 | Vol. 28 P. 410 | Lot 3 Block 1 Slater Homestead | Sept 15, 1938 x MC |
| James Cassidy } Magdalene Cassidy } | Deed | | Vol. 34 P. 500 | Lot 15 Block 1 Slater Homestead | MC Mar 13, 1945 x |
| 75. Harry B. Palmer } 76. Ruth A. Palmer } | Deed | 1 | Vol. 34 P. 353 | Slater Homestead Lot 6 Block 1 | MC Mar 18, 1946 x |
| 77. Lisetta Manske | Deed | | | Lot 1A 1B Block 1 Slater | Aug 31, '43 MC |
| 78. | Non-owner | | | Lot 1A 1B Block 1 Slater | Aug. 31, '43 MC |
| 79. Ted C. Mathews } 80. Alberta Mathews } | Deed } Deed } | 2 | #103542 Vol. 35 P. 59 | Lot 5 Block 5 (part) Lot 1 Block 1 Slater | May 29, '47 MC Apr 17, 1944 x |
| 81. Virginia B. Parrish..... | Deed | 1 | Vol. 35 P. 435 | Lot 19 19A Block 1 Slater | Sept 17, 1947 x MC |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Chil- dren | Where Recorded or Found | Description (full) | Date Acquired (comments) | Ck'd |
|-------------------------|----------------------|---------------|----------------------------|---|-----------------------------|------|
| 82. Nell H. Smith | Deed | 1 | | Lot 16 Block 1 Slater West $\frac{1}{3}$ Lot 17 Block 1 | MC | x |
| 83. V. Maurice Smith | Deed | | | | MC | x |
| 84. Mary Murray | Deed | 2 | Fairbanks Precinct | E 47' Lot 17 & Lot 18 Block 1 Slater Lot 3 Block 8 Brandt | Dec. 1947 Mar. 1945 | MC |
| 85. Ray H. Pratt | Deed | | | Lot 14 Block 1 Slater | Apr. 1947 | MC |
| 86. Myrtle I. Pratt | Deed | | | Lot 14 Block 1 Slater | Apr. 1947 | MC |
| 87. Robert A. MacDonald | Deed | 2 | Fairbanks | Lot 4 Block 1 Slater | | MC |
| 88. Norma H. MacDonald | Deed | | Fairbanks | Lot 4 Block 1 Slater | | MC |
| 89. Alta B. Billing | C/S | | Fairbanks | Lot 8 Block 1 Slater | | MC |
| 90. Bernice McLean | Deed | | Fairbanks | Lot 5 Block 1 Slater | Sept. 1947 | MC |
| 91. Patrick Murphy | Owner | | Fairbanks | Lot 9 Block 5 & Lot 22 Blk 1 Slater Sub | May 1947 | |
| 92. Chas. J. Clasby | Owner | | Fairbanks Precinct | Lots 2 & 3 Block 6 Brandt Homestead | April 1947 | |
| 93. Hazel Clasby | Co-owner | | Fairbanks Precinct | Lots 2 & 3 Block 6 Brandt Homestead | April 1947 | |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|-----------------------------|-------------------|-------------------------|--|-------------------------------|
| 94. Juanita Boulet | Co-owner | Fairbanks Precinct | Lots 1 & 5 Block 6 Brandt Homestead | Nov 1, 1947 |
| 95. J. A. Boulet..... | Co-owner | Fairbanks Precinct | Lots 1 & 5 Block 6 Brandt Homestead | Nov 1, 1947 |
| 96. Maurice Butler | Owner | Fairbanks Precinct | Lot 5 Block 4 Brandt Homestead | Aug. 1942 |
| 97. Violet Butler | Co-owner | Fairbanks Precinct | Lot 5 Block 4 Brandt Homestead | Aug. 1942 |
| 98. Frances Taylor | Co-owner | Fairbanks Precinct | Lot 8 Block 2 Brandt | May 1944 |
| 99. Eva M. Hansen..... | Owner | Fairbanks Precinct | Lot 14 Blk 2 Slater Sub | |
| 100. Arthur H. Hayr | Co-owner | Fairbanks Precinct | Lots 15A & 15B Blk 6 N. Fairbanks Addn. | Feb. 1946 |
| 101. Noreen L. Hayr..... | Co-owner | Fairbanks Precinct | Lots 15A & 15B Blk 6 N. Fairbanks Addn. | Feb. 1946 |
| 102. W. L. Lhamon..... | Owner | Fairbanks Precinct | Lot 19 & 20 Block 6 N. Fairbanks Addn. | Nov. 1940 |
| 103. Mrs. W. L. Lhamon..... | Co-owner | Fairbanks Precinct | Lot 19 & 20 Block 6 | Nov. 1940 |
| 104. Richard R. Jones..... | Contract Sale | Bank of Fairbanks | Part 12 Block 6 N. Fairbanks Addn. | April 1947 |
| 105. Alden L. Wilbur..... | Contract Sale | Fairbanks Precinct | Part 12 Block 6 N. Fairbanks Addn. | Oct. 1947 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|-------------------------------|-------------------|-------------------------|---------------------------------------|-------------------------------|
| 106. Mariel Wilbur | Contract Sale | Fairbanks Precinct | Part 12 Block 6 N. Fairbanks Addn. | Oct. 1947 |
| 107. Herschel J. Harter | Contract Sale | C. H. Clegg's office | Lot 1 Block 5 Brandt Homestead | Sept. 1945 |
| 108. Mrs. Pat Harter | Contract Sale | C. H. Clegg's office | Lot 1 Block 5 Brandt Homestead | Sept. 1945 |
| 109. Irving W. Abbott | Co-owner | Fairbanks Precinct | Lot 7 Blk 3 Brandt Ave. | Aug 7, 1947 |
| 110. Blanche N. Abbott | Co-owner | Fairbanks Precinct | Lot 7 Blk 3 Brandt Ave. | Aug 7, 1947 |
| 111. Jack Taylor | Owner | Fairbanks | Lot 8 Block 2 Brandt | May 12, 1944 |
| 112. Frankie A. Coe | Owner | Fairbanks | Lot 10 Block 2 Brandt | April 1943 |
| 113. William T. C. Coe | Co-owner | Fairbanks | Lot 10 Block 2 Brandt | April 1943 |
| 114. Royal C. Watkins | Owner | Fairbanks | Lot 9 Block 2 Brandt | Oct. 1945 |
| 115. Viola D. Watkins | Co-owner | Fairbanks | Lot 9 Block 2 Brandt | Oct. 1945 |
| 116. Howard Thorgaard | Owner | Fairbanks | Lot 7 Block 2 Brandt Homestead | April 15, 1941 |
| 117. Rachel A. Josephs | Owner | Fairbanks | Lot 5 Block 2 Brandt Homestead | Sept. 1936 |
| 118. P. V. Josephs | Owner | Fairbanks | Lot 5 Block 2 Brandt Homestead | Sept. 1936 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|---|-------------------|----------------------------|--|-------------------------------|
| 119. Leif R. Ostnes..... | Owner | Fairbanks | N. Portion Lot 1 Blk 3 Brandt Homestead | May 1946 |
| (Meredith G. Ostnes) 120. Mrs. Leif R. Ostnes..... | Owner | Fairbanks | N. Portion Lot 1 Blk 3 Brandt Homestead | May 1946 |
| 121. Harry A. Grissom | Owner | Fairbanks | S. Portion Lot 1 Blk 3 Brandt Homestead | 1939 |
| 122. Nettie Grissom..... | Owner | Fairbanks | S. Portion Lot 1 Blk 3 Brandt Homestead | 1939 |
| 123. Harold W. Richardson..... | Contract Sale | Territorial Vets Office | Lot 1, Block 8 Brandt Homestead | Oct. 1947 |
| 124. Alma M. Richardson..... | Contract Sale | Territorial Vets Office | Lot 1, Block 8 Brandt Homestead | Oct. 1947 |
| 125. James F. Borders | Co-owner | Fairbanks | Portion Lot 12 Block 6 N. Fairbanks Addn. | Nov. 1945 |
| 126. Irene M. Borders..... | Co-owner | Fairbanks | Portion Lot 12 Block 6 N. Fairbanks Addn. | Nov. 1945 |
| 127. Roy A. A. Larson..... | Deed | Fairbanks | Portion Lot 2 Block 7 N. Fairbanks Addn. | Mar. 1941 |
| 128. Wilbur Walker | Deed Co-owner | Fairbanks | Lot 19 20 15 & 16 Block 2 Slater Sub | April 1945 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|----------------------------------|---------------------|-------------------------|---|-------------------------------|
| 129. Thelma V. Walker..... | Co-owner | Fairbanks | Lot 19 20 15 & 16 Block 2 Slater Sub | April 1945 |
| 130. Bert E. Olsen..... | Owner | Fairbanks | Lot 6 Block 4 Brandt Homestead | Aug. 1942 |
| 131. Anne Branholm | Owner | Fairbanks | | June 1, 1940 Jan. 1 |
| 132. Mary Hansen | Contract of Sale | 1st National Bank | Lot 5 Block 6 Slater | Sept. 1946 |
| 133. Rudy Grassman | Contract of Sale | Collins & Clasby | Lot 4 Block 3 Brandt | Sept 30, 1947 |
| 134. Catherine Grassman..... | Contract of Sale | Collins & Clasby | Lot 4 Block 3 Brandt | Sept 30, 1947 |
| 135. G. A. Johnson | Owner | Fairbanks | East 1/2 Lot 21 Block 2 Slater | Aug. 1945 |
| 136. James T. Hutehison, Jr..... | Owner | Fairbanks | Lot 3 Block 3 Brandt | Oct. 1947 |
| 137. Lucille G. Hutehison..... | Co-owner | Fairbanks | Lot 3 Block 3 Brandt | Oct. 1947 |
| 138. W. G. Mitchell..... | Deed Co-owner | Fairbanks | Lot 2 Block 8 Brandt Homestead | Jan. 1947 |
| 139. Eve Mitchell | Co-owner | Fairbanks | Lot 2 Block 8 Brandt Homestead | Jan. 1947 |

Witnesseth: That we have read and understand the foregoing petition, hereby consent to the annexation therein requested and are persons qualified to so petition:

| Signature | Property Interest | Where Recorded or Found | Description (full) | Date Acquired (comments) Ck'd |
|-------------------------------|-------------------|---------------------------------|-----------------------------|--|
| 140. Edward M. Cox..... | Owner | Fairbanks | Lots 9 & 10 Blk 8 Slater | June 1946 |
| 141. Jean Cox | Owner | Fairbanks | Lots 9 & 10 Blk 8 Slater | June 1946 |
| 142. Jessie C. Anderson | Owner | Fairbanks | Lots 4 5 6 & 1/2 of 7 Blk 1 | Lots 4 & 5 June 1936 Lots 6 & 1/2 of 7, 1930 |
| Lee S. Sinek..... | Owner 1/2 | Fairbanks | Lot 16 Blk 3 Lot 1 Blk 4 | 1940 - 1944 |
| George P. Nehrbaas | Owner | Fairbanks | Block A and C | 1942 |
| Ray Johnson | Owner | North Addition | S. Portion Lot 2 Blk 7 | 1945 |
| J. A. Korba..... | Owner | Brandt Sub. Div. | Lot 3 & 4 Block 2 | 1935 |
| Max Baumeister | Owner | Brandt Sub. Div. | Lot 1 & 2 Block 4 | Lot 1 - 1941 Lot 2 - 1938 |
| Annette Anderson | Owner | Slaterville | Lot 8 Block 1 | July 1944 |
| Martin H. Ott | Owner | Brandt Sub. Div. | Lot 5 Block 3 | Sept. 1946 |
| Max O Miller..... | Owner | North Addition Garden Island | Lot 10 Block 6 | Nov. 1930 |

[Endorsed] : Filed Nov. 9, 1948.

RESOLUTION

re: Annexation, North Fairbanks

Whereas, a majority of the owners of substantial interests in property in those areas adjacent and contiguous to the North boundary of the Town of Fairbanks, Alaska, have signed a petition for the annexation of those areas to the Town of Fairbanks, Alaska; and

Whereas, said area has been surveyed and a plat thereof made; and it is the desire of the Town of Fairbanks to annex said area, Now, Therefore

It Is Hereby Resolved that it is the desire of the Town of Fairbanks, Alaska, a municipal corporation, to enlarge the limits of said city by annexing the territory contiguous thereto on the north commonly known as Slaterville, North Fairbanks and Garden Island as more particularly described in a plat thereof and in the petition for annexation thereof this day presented to the Council of said Town; and it is Further Resolved that said particular petition be verified by the Mayor and filed in the District Court for the Fourth Division of the Territory of Alaska; and the officers of said Town are hereby directed to take all steps necessary to cause said annexation of said areas to be accomplished.

/s/ RAY KOHLER,
Mayor.

Passed: November 8, 1948.

Approved: November 8, 1948.

Attest:

[Seal] /s/ E. A. TONSETH,
Municipal Clerk.

I hereby certify that the foregoing is a full, true and correct copy of the resolution relating to the annexation of North Fairbanks adopted by the Common Council of the Town of Fairbanks, Alaska in regular meeting assembled on the 8th day of November, 1948, and now appearing among the minutes of said meeting.

Dated: at Fairbanks, Alaska this 10th day of November, 1948.

[Seal] /s/ E. A. TONSETH,
Municipal Clerk.

[Corporate Seal]

[Endorsed]: Filed Nov. 10, 1948.

[Title of District Court and Cause.]

ORDER FIXING HEARING

This matter coming on duly and regularly to be heard this day upon the Petition of the Town of Fairbanks, in the matter of the Annexation of certain lands known as "Slaterville," "Garden Island" and "North Fairbanks," for the entry herein of an Order setting a time and place for the hearing of said Petition and providing notice thereof and the Court finding from said Petition as follows:

a) That it is verified by the Mayor and a resident of the area proposed to be annexed and supported by the signatures of persons alleged to be the majority of the owners of substantial interests in lands, rights in land and improvements on lands within the territory proposed to be annexed,

b) That said Petition sets forth the metes and bounds of the territory sought to be annexed and is accompanied by a plat alleged to be based on actual surveys by competent engineers; that said Petition alleges the number of inhabitants within the area proposed to be annexed, and the number of owners of substantial interests in property in said area; and

c) That said Petition contains the allegation of all facts deemed by the Court requisite to a proper determination thereof; Now Therefore

It Is Hereby Ordered That the Petition of the Town of Fairbanks, a municipal corporation, for the annexation of certain lands known as "Slaterville," "Garden Island" and "North Fairbanks," be and the same is hereby set for hearing before the above entitled Court on the 9th day of December, 1948, at the hour of 2 o'clock p.m., in the courtroom of said Court in the Federal Building in the Town of Fairbanks, Territory of Alaska; and all persons interested therein are directed to appear at that time and place, to show cause, if any they have, that said Petition is unreasonable, said annexation unjust, that there exists private rights that will be

injured thereby, or any other reason why said Petition should not be granted and an order entered submitting the question of annexation to the electors of said municipality and the areas sought by said Petition to be annexed.

It is further ordered that notice of the time and place of the hearing of this Petition shall be given by posting and publishing a notice thereof under the heading of this cause in this Court, describing the land sought to be annexed, specifying the time and place of hearing, and directing all persons interested therein to attend and show cause, if any they have, why the relief requested in said Petition should not be granted.

It is further ordered that said notice shall be posted in the following three places in the Town of Fairbanks, Alaska, they being deemed the most public places in said town:

The bulletin board in the entrance to the United States Post Office;

The bulletin board on the Red Cross Building between First and Second Avenues on Cushman Street; and

The bulletin board on the entrance to the City Hall on the corner of Fifth and Cushman Streets, and in the following three places within the territory sought to be annexed:

At the Scale Building of the Healy Coal Bunkers on Illinois Street on Garden Island;

At the entrance of the office of the Fairbanks Lumber Supply on Illinois Street on Garden Island; and

On the telephone pole at the intersection of Betty and Slater Streets,

and that said notice be published at least three times in the Fairbanks Daily News Miner, a newspaper published in the Town of Fairbanks, Alaska.

It is further ordered that all of said notices be posted not less than four weeks prior to the date upon which said hearing will be held, and that said notice be first published in said newspapers not less than four weeks prior to the date upon which said hearing will be held.

Dated at Fairbanks, Alaska this 9th day of November, 1948.

/s/ HARRY E. PRATT,
District Judge.

Entered Nov. 9, 1948.

[Endorsed]: Filed Nov. 9, 1948.

[Title of District Court and Cause.]

ANSWER TO PETITION AND ORDER
TO SHOW CAUSE

Now comes protestant United States Smelting Refining and Mining Company, and in answer to the petition and the order to show cause heretofore entered and dated November 9, 1948, respectfully shows:

1. Alleges that it is the owner of substantial property rights of considerable value, and substantial property interests in land and possessory rights in land and improvements upon land within the alleged limits of the territory sought to be annexed by the petition of the Town of Fairbanks heretofore filed herein, and said property rights, property interests and possessory rights include, among others, lands, office buildings, a power plant, shops, garages, warehouses, dwelling houses, and other buildings; in and about said lands protestant conducts a large and extensive business of gold mining and other operations incidental thereto, and has invested large sums in connection with said business and the acquisition of said properties.

2. Protestant denies the allegations of paragraphs II, III, IV, V and VI of said petition.

3. Protestant denies the allegations of paragraph VII of said petition and in that respect alleges that the territory sought to be annexed is only partly developed as a residential area, that said residential area so developed and blocked off into streets does not exceed 71 acres in area of the territory sought to be annexed, and that the remaining portion of said territory is industrial land, occupied to some extent for the purposes of heavy industry and business, and will not be developed as a residential area for many years, if at all.

Protestant further alleges that the assessed value of the territory sought to be annexed is in excess

of \$2,900,000, and the assessed value of protestant's property in said territory is in excess of \$1,775,000.

Protestant further alleges that it has private rights that will be injured by said annexation and that it is unjust and unreasonable that said territory be annexed to the Town of Fairbanks.

Protestant further alleges that there is little or no benefit to this protestant in said annexation; that this protestant does not sell any of its products in the Town of Fairbanks but, on the contrary, spends large sums of money therein for its own necessary materials and supplies aggregating large sums each year, and alleges that the property of this protestant will be subject to heavy and excessive taxation far exceeding the slight benefit to be derived by protestant from said annexation, if said petition be granted and said territory be annexed to said Town of Fairbanks.

4. Protestant alleges that one or more of the signers of said petition are not owners of substantial property rights or substantial property interests in land or possessory rights in land or improvements upon land within the alleged limits of the territory sought to be annexed.

5. Protestant alleges that sections 2419 and 2421 of the Compiled Laws of Alaska, 1933, are unconstitutional and void in that they constitute an unlawful delegation of legislative power to the district court of the Territory of Alaska, and contravene the Fifth and Fourteenth Amendments to the

United States Constitution and the Organic Act of Alaska.

6. Protestant alleges that sections 2419 and 2421 of the Compiled Laws of Alaska, 1933, are unconstitutional and void in that they impose nonjudicial functions on the district court for the Territory of Alaska, contrary to sections 3 and 4 of the Organic Act of the Territory of Alaska, August 24, 1913 (48 U.S.C. 23, 72, 80; C.L.A. (1933), sec. 463, 465, 485), as amended by the Act of August 29, 1914 (48 U.S.C. 91; C.L.A. (1933), sec 486), and to sections 4 and 698 of the Act of June 6, 1900 (48 U.S.C. 101), as amended.

7. Protestant further alleges that sections 2419, 2421 and 2425 of the Compiled Laws of Alaska, 1933, are unconstitutional and void and contravene the Fifth and Fourteenth Amendments to the United States Constitution and the Organic Act of Alaska by reason of their vagueness, uncertainty and indefiniteness.

8. Protestant further alleges that the entertaining and granting of said petition will deprive protestant of its property without due process of law, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and will deny to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, in that sections 2419, 2421 and 2425 of the Compiled Laws of Alaska, 1933, under which said petition is brought, improp-

erly purport to delegate legislative power to the district court for the Territory of Alaska and are vague, uncertain and indefinite.

9. Protestant alleges that the district court, for the reasons hereinabove mentioned, has no jurisdiction to hear, allow, or otherwise entertain the petition filed in this proceeding by the Town of Fairbanks.

Wherefore, this protestant prays that said petition be hence dismissed, for its costs of suit herein incurred, and for such other relief as is meet and proper in the premises.

/s/ SOUTHALL R. PFUND,

/s/ JULIEN A. HURLEY,

Attorneys for United States Smelting, Refining
and Mining Company.

We certify the foregoing to be a true copy of the original document filed herein.

/s/ SOUTHALL R. PFUND,

/s/ JULIEN A. HURLEY.

Service of a copy of the foregoing answer to petition and order to show cause is hereby acknowledged this 22nd day of April, 1949.

COLLINS & CLASBY,

Attorneys for Town of
Fairbanks.

Town of Fairbanks,
Territory of Alaska—ss.

Roy B. Earling, being first duly sworn on oath
says:

I am an officer, to wit, a vice president of United
States Smelting Refining and Mining Company, a
Maine corporation, the protestant and objector in
the above-entitled action, and make this verification
on its behalf; I have read the foregoing answer
of protestant, know the contents thereof, and the
same is true as I verily believe.

/s/ ROY B. EARLING.

Subscribed and sworn to before me this 7th day
of December, 1948.

[Seal] /s/ HERTHA N. BAKER,
Notary Public in and for the
Territory of Alaska.

My Commission Expires February 28, 1949.

[Endorsed]:Filed Apr. 22, 1949.

[Title of District Court and Cause.]

ANSWER TO PETITION AND ORDER
TO SHOW CAUSE

Comes now protestant Charles Slater, and in answer to the Petition and Order to Show Cause heretofore filed and entered herein and dated November 9, 1948, respectfully shows:

I.

Alleges that he is the owner of substantial property rights of not much value, and substantial property interests in land and possessory rights in land and improvements upon land within the alleged limits of the territory sought to be annexed by the petition of the Town of Fairbanks heretofore filed herein, and said property rights and property-interests include approximately twelve (12) acres of farm land which is valuable only for farm purposes, except that it is now leased to the Federal Government for the sum of Sixty Dollars (\$60.00) per month and is being used by the United States Army. That said land will not be benefited by being included within the limits of the Town of Fairbanks, Alaska for the reason that the United States Army has provided water and sewage for its own use, and that the taxes that would be imposed by the Town of Fairbanks, Alaska, which protestant would be compelled to pay, would be in excess of the income derived by him from said land, and he would derive no benefit

whatever, either as to fire protection, sewage or lights for the reason that said lands are unimproved and could be used only for rental and farm purposes, or for occupancy by the United States Army, for which they are now rented.

II.

Protestant denies the allegations contained in Paragraphs II, III, V, VI and VII of said Petition.

III.

Protestant alleges that said territory sought to be annexed is only partly developed as a residential area and that said residential area so developed and blocked off in streets does not exceed one-third in area of the territory sought to be annexed.

IV.

Protestant alleges that this protestant has private rights which will be injured by said annexation and that it is unjust and unreasonable that said territory be annexed to the Town of Fairbanks, Alaska.

V.

Protestant alleges that there are more than three hundred and ten (310) owners of substantial property interests in land or possessory rights in land, tideland or improvements upon land or tideland within the limits of the territory described in said Petition and proposed to be annexed to the Town of Fairbanks, Alaska.

VI.

Protestant further alleges that there are less than one hundred and forty (140) owners of substantial property interests in land or possessory rights in land or improvements upon land within the limits of the territory sought to be annexed by said Petition to the Town of Fairbanks, Alaska who have signed said Petition, and the persons signing said Petition constitute less than fifty per cent (50%) of the owners of substantial property interests in land or possessory rights in land or improvements upon land within the limits of the territory as described in said Petition.

VII.

Protestant alleges that the District Court, for the reasons hereinabove mentioned, has no jurisdiction to hear, allow or otherwise entertain the Petition filed in this proceeding by the Town of Fairbanks, Alaska.

Wherefore, this protestant prays that said Petition be dismissed, and for his costs and disbursements herein and for a reasonable sum to be allowed as an attorney fee, and for such other relief as is just and equitable.

JULIEN A. HURLEY,
Attorney for Protestant
Charles Slater.

United States of America,
Territory of Alaska,
Fourth Judicial Division—ss.

Charles Slater, being first duly sworn upon oath,
deposes and says:

That I am the protestant and objector in the
above entitled action; that I have read the fore-
going Answer to Petition and Order to Show
Cause, know the contents thereof, and the same is
true as I verily believe.

CHARLES SLATER.

Subscribed and sworn to before me this 9th day
of December, 1948.

[Seal] JULIEN A. HURLEY,
Notary Public in and for the Territory of Alaska.
My Commission Expires June 12, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed April 22, 1949.

[Title of District Court and Cause.]

REPLY TO ANSWER OF PROTESTANT
UNITED STATES SMELTING REFINING
AND MINING COMPANY

Comes Now the Petitioner and for reply to the
Affirmative matter contained in the Answer of
Protestant United States Smelting Refining and
Mining Company, admits, denies and alleges as
follows:

I.

For answer to paragraph 1 of Protestant's answer petitioner denies that said Protestant conducts a large and extensive business of gold mining on any of the properties embraced in the area by said petition sought to be annexed; and admits all other allegations in said paragraph contained.

II.

For answer to paragraph 3 of said answer petitioner denies that protestant has any private rights that will be injured by said annexation and that it is unjust and unreasonable that said territory be annexed to the Town of Fairbanks, Alaska; denies that annexation is of no benefit to protestant, admits that protestant does not sell any of its products in the Town of Fairbanks, Alaska and alleges that by law it is required to sell its products to the Treasury of the United States, or licensed dealers in gold; denies that anything over a barely perceptible percentage of its purchases are made in the Town of Fairbanks, deny that protestant's property will be subject to heavy and excessive taxation, or any taxation over the legal rate or other than on equalized values at a uniform rate with similar property, and denies that protestants will not benefit thereby to the same extent as any taxpayer; and for further answer to said paragraph petitioner alleges that protestant established its buildings, shops, warehouses and power plant adjacent to the Town of Fairbanks about 20 years

ago, and since then residential and industrial development in excess of \$2,000,000.00 current appraised value has filled the area sought to be annexed, other than occupied by protestant. That in the area sought to be annexed there are no retail outlets, schools, or utility services. The Protestant employs in excess of 600 persons in season, drawing largely on Fairbanks for its pool of labor. That without the Town of Fairbanks protestant's labor costs would be sharply increased, and it forced to maintain schools, utilities, housing, retail outlets, personal service businesses and many other functions at its own cost for the convenience of its employees.

III.

Denies the allegations contained in paragraphs V, VI, VII, VIII and IX of said answer.

Wherefore, Petitioner Prays for the Relief Requested in Its Petition.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY.

United States of America,
Territory of Alaska—ss.

Ray Kohler, being first duly sworn, on his oath deposes and says: That I am the Mayor of the Town of Fairbanks, Alaska, a municipal corporation, and subscribe to this verification on behalf of said Town under authority so to do given by the Council of the said Town; That I have read the

within and foregoing Reply to Answer of Protestant, United States Smelting, Refining and Mining Company, know the contents thereof and that the same are true and correct as I verily believe.

/s/ RAY KOHLER.

Subscribed and Sworn to before me this 27th day of April, 1949.

[Seal] /s/ MYRTLE L. BOWERS,
Notary Public in and for
Alaska.

My commission expires June 10, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1949.

[Title of District Court and Cause.]

REPLY TO ANSWER OF PROTESTANT
CHARLES SLATER

Comes Now the Petitioner and for reply to the affirmative matter contained in the Answer of protestant Charles Slater admits, denies and alleges as follows:

I.

Denies each and every allegation contained in paragraphs I, III, IV, V, VI and VII of protestant's answer.

Wherefore, Petitioner having fully replies to the

answer filed herein prays for the relief requested in its petition.

COLLINS & CLASBY,
By CHAS. J. CLASBY,
Attorneys for Petitioner.

United States of America,
Territory of Alaska—ss.

Ray Kohler, being first duly sworn, on his oath deposes and says: That I am the Mayor of the Town of Fairbanks; Alaska, a municipal corporation, and subscribe to this verification on behalf of said Town under authority so to do given by the Council of the said Town; That I have read the within and foregoing Reply to Answer of Protestant, Charles Slater, know the contents thereof and that the same are true and correct as I verily believe.

RAY KOHLER.

Subscribed and Sworn to before me this 27th day of April, 1949.

[Seal] /s/ MYRTLE L. BOWERS,
Notary Public in and for
Alaska.

My commission expires June 10, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed April 27, 1949.

[Title of District Court and Cause.]

NOTICE OF HEARING

To: All Electors of the Town of Fairbanks, Alaska, a Municipal Corporation, all Electors and Owners of substantial property interests in the area hereinafter described and to all persons interested therein:

You Are Hereby Notified That the Petition of the Town of Fairbanks, a Municipal corporation, for the annexation to the Town of Fairbanks, of the following described area to wit:

Beginning at a meander corner No. 1 of the plat of a survey for the proposed addition to the Town-site of Fairbanks, Alaska, dated July, 1947, said point being meander corner No. 7 of U. S. Survey No. 806, as amended April 16, 1920, and situate on the south meander line of Noyes Slough; thence meandering said Noyes Slough upstream, S. $70^{\circ}17'$ E. 418.9 ft. to meander corner No. 2; S. $78^{\circ}39'$ E. 300.0 ft. to meander corner No. 3; S. $48^{\circ}51'$ E. 258.0 ft. to meander corner No. 4; S. $26^{\circ}18'$ E. 286.0 ft. to meander corner No. 5; S. $40^{\circ}59'$ E. 152.37 ft. to meander corner No. 6; S. $30^{\circ}43'$ E. 165.0 ft. to meander corner No. 7; S. $12^{\circ}51'$ W. 50.0 ft. to meander corner No. 8; S. $34^{\circ}49'$ W. 98.5 ft. to meander corner No. 9; S. $60^{\circ}45'$ W. 84.0 ft. to meander corner No. 10; S. $74^{\circ}40'$ W. 188.0 ft. to meander corner No. 11; N. $47^{\circ}28'$ W. 32.2 ft. to meander corner No. 12; N. $83^{\circ}58'$ W. 147.4 ft. to meander corner

number 13; N. $88^{\circ}58'$ W. 100.0 ft. to meander corner No. 14; S. $59^{\circ}56'$ W. 220.2 ft. to meander corner No. 15; S. $52^{\circ}40'$ W. 304.87 ft. to meander corner No. 16; S. $30^{\circ}51'$ W. 228.1 ft. to meander corner No. 17 at which point the meander line of Noyes Slough joins the north meander line of the Chena River; thence meandering said Chena River downstream, S. $79^{\circ}50'$ W. 305.18 ft. to meander corner No. 18; S. $68^{\circ}51'$ W. 156.65 ft. to meander corner No. 19; S. $47^{\circ}34'$ W. 233.94 ft. to meander corner No. 20; S. $40^{\circ}45'$ W. 258.25 ft. to meander corner No. 21 situate at the junction of the meander lines of the Chena River and Garden Island Slough, said meander corner No. 21 being the N. E. corner of the present Fairbanks Townsite boundary; thence meandering said Garden Island Slough downstream along the said Fairbanks Townsite Boundary, N. $47^{\circ}53'$ W. 178.96 ft. to meander corner No. 22; N. $64^{\circ}19'$ W. 35.73 ft. to meander corner No. 23; N. $50^{\circ}07'$ W. 214.14 ft. to meander corner No. 24; N. $55^{\circ}35'$ W. 221.8 ft. to meander corner No. 25; N. $64^{\circ}53'$ W. 187.96 ft. to meander corner No. 26; N. $74^{\circ}24'$ W. 188.71 ft. to meander corner No. 27; S. $83^{\circ}55'$ W. 249.75 ft. to meander corner No. 28, said corner No. 28 being corner No. 5 of U. S. Survey No. 847; thence S. $47^{\circ}21'$ E. 101.64 ft. to meander corner No. 29; thence S. $10^{\circ}44'$ E. 496.32 ft. to meander corner No. 30; thence S. $10^{\circ}30'$ E. 60.06 ft. to meander corner No. 31; thence S. $17^{\circ}06'$ W. 495.0 ft. to meander corner No. 32; said meander corner No. 32 being corner No. 4 of U. S. Survey No. 847; thence N.

49°45' W. 613.8 ft. to meander corner No. 33; thence N. 49°47' W. 140.02 ft. to meander corner No. 34; thence N. 32°23' W. 575.12 ft. to meander corner No. 35; thence N. 48°02' E. 596.35 ft. to meander corner No. 36; thence N. 25°14' E. 2,368.02 ft. to meander corner No. 37; thence N. 76°04' E. 524.6 ft. to meander corner No. 38; thence S. 24°51' E. 533.2 ft. to meander corner No. 39; thence S. 39°00' E. 198.0 to meander corner No. 40; thence S. 44°30' E. 554.4 ft. to meander corner No. 1 and the point of beginning,

being that area contiguous to the north boundary of the Town of Fairbanks, Alaska, known as "Slaterville," "Garden Island," and "North Fairbanks," will be brought on for hearing before the above-entitled Court in the Courtroom of said Court in the Federal Building in the Town of Fairbanks, Alaska, on the 9th day of December, 1948, at the hour of 2 o'clock p.m.

You Are Commanded to then and there appear, and show cause, if any you have, why said Petition should not be granted and an order entered providing for the submission of the annexation of said Territory to the Town of Fairbanks to the electors of said Town of Fairbanks and of the area by said Petition sought to be annexed.

Dated: This 9th day of November, 1948.

JOHN B. HALL,

[Seal]

/s/ JOHN B. HALL,

Clerk, District Court.

[Title of District Court and Cause.]

MARSHAL'S RETURN OF SERVICE
OF NOTICE OF HEARING

I, Stanley J. Nichols, United States Marshal for the Territory of Alaska, Fourth Division do hereby certify and return that I received the hereto attached original Notice of Hearing issued by the Clerk of Court in the above-entitled matter at Fairbanks, Alaska, on the 9th day of November, 1948, and that thereafter on the 9th day of November, 1948, I duly served the same by posting a full, true and correct copy of the Notice of Hearing hereto attached in the following places, to wit:

In the Town of Fairbanks:

(a) Bulletin Board entrance to U. S. Post Office;

(b) Bulletin Board on the Red Cross Building between First and Second Avenues on Cushman Street;

(c) Bulletin Board entrance to the City Hall, corner 5th and Cushman Streets.

In Area described in Notice:

(d) In the Scale Building of the Healy Coal Bunkers on Illinois Street in Garden Island;

(e) At the entrance of the office of the Fairbanks Lumber Supply on Illinois Street in Garden Island;

(f) On the telephone pole at the intersection of Betty and Slater Streets in Slaterville.

Dated at Fairbanks, Alaska, this 10th day of November, 1948.

STANLEY J. NICHOLS,

United States Marshal.

By /s/ THOMAS P. COX,

Deputy.

[Endorsed]: Filed Nov. 10, 1949.

AFFIDAVIT OF PUBLICATION

United States of America,

Territory of Alaska, Fourth Division—ss.

Before me, the undersigned, a notary public, this day personally appeared William C. Strand, Jr., who, being first duly sworn, according to law, says that he is the Editor of The Fairbanks Daily News-Miner, a newspaper published at Fairbanks, in said Fourth Division and Territory, and that the advertisement, of which the annexed is a true copy, was published in said paper on the 9th day of November, 1948, and once each week Thereafter for 3 consecutive weeks, the last publication appearing on the 30th day of November, 1948, and that the rate charged thereon is not in excess of the rate charged private individuals, with the usual discounts.

/s/ WILLIAM C. STRAND, JR.

Subscribed and sworn to before me this 17th day
of May, 1949.

[Seal] /s/ PHILIP A. JOHNSON,

Notary Public.

My Commission expires 3 Sept., 1949.

[Endorsed]: Filed May 23, 1949.

In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 6032

In the Matter of:

The Annexation of Certain Lands Known as
“Slaterville,” “Garden Island” and “North
Fairbanks”

To: THE TOWN OF FAIRBANKS, ALASKA, a
Municipal Corporation.

JUDGMENT

This cause coming on for trial before the above-entitled Court on the 23rd day of May, 1949, and the Town of Fairbanks, the Petitioner herein, appearing by and through its attorney, Charles J. Clasby, and the Protestants, Charles Slater and the United States Smelting Refining and Mining Company, appearing by and through their attorney, Julien A. Hurley, and the Petitioner having introduced evidence in support of its said petition and having rested its case, and the said attorney for the said

Protestants having made a motion for a non-suit for the reason that the said Petitioner had failed to prove that a majority of the owners of substantial property interests in land, or possession in land, or improvements upon land, in the area described in said petition, had signed said petition, and the Court having allowed said motion for a non-suit and being fully advised in the premises;

Now, Therefore, It Is Hereby Ordered and Adjudged that said petition be, and the same is, hereby dismissed, and that the said Protestants, Charles Slater and the United States Smelting Refining and Mining Company recover from the said Town of Fairbanks, Alaska, their costs and disbursements herein to be taxed by the Clerk of the Court, in the sum of \$., but without attorney's fee (HEP), and that execution issue therefor.

Dated this 31st day of May, 1949.

/s/ HARRY E. PRATT,
District Judge.

Entered May 31, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed May 31, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: United States Smelting, Mining and Refining Company, Charles Slater, Protestants, and Julian A. Hurley and Southall R. Pfund, their attorneys:

You are hereby notified that petitioner in the above-described proceeding hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, from the final judgment, made and entered in this action in the above-entitled Court on the 31st day of May, 1949, in favor of protestants and against petitioner, wherein it was ordered and adjudged that the petition be dismissed.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

STIPULATION RE: PRINTING OF RECORD

It is hereby stipulated by and between the above-named parties, Petitioner and Protestants, through their respective Attorneys, that in printing the papers and records to be used on the hearing on appeal in the above-entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and Cause in full on all papers shall be omitted, except on the first page of said record and that there shall be inserted in place of said title on all papers used as a part of said records the words "Title of Court and Cause." Also that all endorsements on said papers used as a part of said record shall be omitted, except the Clerk's file marks and the admission of service.

Dated at Fairbanks, Alaska, this 15th day of June, 1949.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Petitioner and
Appellant.

/s/ JULIEN A. HURLEY, of

Attorneys for Protestants
and Appellees.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL

The Petitioner, Town of Fairbanks, Alaska, a municipal corporation organized and existing in the Territory of Alaska, considering itself aggrieved by the judgment of this Court, made and entered in the above-entitled action on the 31st day of May, 1949, in favor of the Protestants, the United States Smelting, Refining and Mining Company, Inc., and Charles Slater, and against said Petitioner, wherein it was ordered and adjudged that the petition of Petitioner for the annexation to it of the area described in said petition be dismissed upon the allowance by the Court of a motion by Protestants for a non-suit, does hereby appeal from said judgment and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified and set forth in the Assignments of Error which is filed herewith and the said Petitioner prays that this appeal be allowed and that a transcript of the record, proceedings and papers, upon which the said judgment was made, duly authenticated by the Clerk of this Court, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated this 14th day of June, 1949.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now petitioner and alleges that the judgment of the above-entitled Court, entered in the above-entitled cause on the 31st day of May, 1949, is erroneous and unjust to it, and file with its Petition for an Allowance of Appeal the following assignments of error upon which it will reply:

I.

The Court erred in granting protestants motion for the entry of an order of non-suit and ordering dismissal of the petition, the proceedings relating thereto being as follows:

“That evidence was presented by the petitioners, and at the close of their evidence, the following motion was made:

“Mr. Hurley: We move at this time, on behalf of the protestants, United States Smelting, Refining and Mining Company and Charles Slater—I desire to move for a non-suit, and ask that the petition be dismissed for the reason that the petition alleges that there are 282 owners of substantial property interests in land or improvements upon land in the Territory above described and sought by this petition to be annexed to the town of Fairbanks, Alaska. We admit that, and allege that there are more than 310 owners.

“Now, the statute says that a petition must be filed with a majority of the owners of substantial

property interests in land or possession in land or improvements upon land within the proposed territory. Now, they have proven that there were 106 people who signed this petition who claimed to have a substantial property interest in land within the area, but according to their own allegations which we admit of 282, although we do say there is more than 310, there would have to be 142 signers on the petition who were qualified signers as owners of property—substantial property rights or interest in land proposed to be annexed.

“Now, they made no attempt to show that they have the required number. The petition, itself, shows that there are 149 signers, and only 106 of these have been shown to have any interest of any kind in property interest in the land proposed to be annexed. Now, on cross-examination I have shown that there are at least 28 who do not have anything recorded in the Land Office to show that they claim any substantial right in land, that they are either owners, lessees or are claiming or holding under lease or contract of sale, so they have entirely failed to prove a majority which they allege. When they allege the number and which they say have signed the petition. They have made no attempt to show that there is a majority of the 282 owners of substantial property interest whom they say have a right to sign the petition in the proposed area. Now, there is nothing that I know of in the law that says under a section like we have here that all they have to do is to file a petition and say that they

have got 53 per cent of the people qualified to sign it.

“It says in the law ‘a petition signed by a majority of the owners of substantial property interests in land or possessory rights in lands, tidelands or improvements upon land or tideland within the limits of the territory so proposed to be annexed, and stating the number of inhabitants therein, as well as the number of owners of property therein situate. And they shall file such a petition in the District Court.’ Well, now, they allege that, and they allege the number who have the right to sign and they allege that 53 per cent have signed.

“Now, the burden of proof is certainly on them to show at least by some kind of evidence that these people that signed the petition were qualified, but they come in and show that 106 signed that they claimed were qualified to sign, but their petition shows that they had to have 142, according to their own allegations, and at least 155, according to our allegations—our Affirmative Defense, so it seems to me there has been a total failure of proof. I think a non-suit should be granted.

“Mr. Clasby: May it please the Court, while it is true that the petition alleges that there are 282 owners of substantial property interests in the area sought to be annexed, that was a matter we must prove, and we brought in the best evidence we could to prove our allegations. Our allegation was in error, and we proved the number of owners of substantial property interests within the area proposed to be annexed, and proved it to be 207. It went in

without objection from any source, insofar as constituting an amendment to the petition; as far as that is concerned it would constitute an amendment to the petition. Now, we are relying upon the registrations as showing what the 100 per cent is, and that figure, according to the testimony, is 207. Now, the Code says: 'Those owners of land within the limits of the territory sought to be annexed, who have filed a statement of their ownership in the United States General Land Office in the District in which the land is situate, in compliance with Chapter 49 of the Session Laws of Alaska, 1945, shall be presumed to be the owners of substantial property interests in land or possessory rights in land, tidelands or improvements upon land or tidelands within the limits of the territory proposed and sought to be annexed in the absence of a clear showing to the contrary.'

"Therefore, according to that section of the Code, the total number of the persons having property within the area who have registered them, are those owners of substantial interests in property which are to be considered in testing whether or not this petition is sufficient. That number, as I have said, is 207, and we have shown by affirmative testimony that the petition is supported by 106 of those persons, and it is obvious that that is a majority of those persons who are, according to this section, the persons owning substantial interest in property within the area sought to be annexed. They are presumed to be the ones, and the statute does leave

it up to the defense on a clear showing that there are others; to have others counted, but until that is done, why it doesn't seem to be a burden of proof upon the City, or upon the proponents of this annexation. This statute gives the description of what shall be called the one hundred per cent.

“Mr. Hurley: If the Court please, all that part of the statute does is to go ahead and say that when they have registered in the Land Office, it shall be *prima facie* evidence of ownership, but it is not conclusive. That, in itself, is not conclusive, and they cannot come in after they allege 282 qualified and we admit that and allege that there are 310, they can't come in and say because they come in and show that by *prima facie* evidence there is 107 and say we have consented to that being the number. We never consented to anything. We admit—they allege it and we admit it, and they are bound by the allegations of their Complaint, and they never asked to amend. They never even asked to amend their Complaint to change the claim it was necessary for them to have 142, and they come in with their petition with some 148 names on it, and now they say that these people they had sign this petition had no right to sign it. I can't understand their theory, your Honor. I admit a lot of them didn't have, but I don't admit there wasn't at least 103 or 104 of them, or even more than that, according to our figures they had to have 155 signers to have a valid petition. People that we have checked on, and know have valid property interests in land and

they are entitled to vote, or were entitled to sign the petition.

“The Court: Well, their allegations were 282 owners of substantial property interests. Why naturally it is up to them to prove that. The fact that they showed there were 207 who registered shows that there were that many that registered, but it doesn’t show that there are others who owned interest in the area and who have failed to register, so the motion is well taken and will be granted. The petition is dismissed.”

II.

The Court erred in making and entering judgment against the Petitioner ordering that the same be dismissed, the same being contrary to the law and the evidence in the respect in these Assignments of Error detailed.

Wherefore, Petitioner prays that said judgment be reversed and the cause remanded for a new trial in accordance with the law.

COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed June 15, 1949.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND

Now, on this 17th day of June, 1949, the same being one of the days of the General May, 1949, Term of this Court, this cause came on regularly to be heard upon the petition of the Town of Fairbanks, a municipal corporation, petitioner in the above described cause, for the allowance of an appeal in behalf of said petitioner from the final judgment entered in this cause on the 31st day of May, 1949, and for the fixing of the amount of the Cost Bond on said appeal.

Now, Therefore, It Is Ordered That the Appeal of said petitioner from the final judgment entered herein on the 31st day of May, 1949, be and is hereby allowed to the United States Court of Appeals for the Ninth Circuit, and that a certified copy of the transcript of record, proceedings, orders, judgment, testimony, and all other proceedings in said matter on which said judgment appealed from is based, be transferred, duly authenticated, to the United States Court of Appeals for the Ninth Circuit at San Francisco, California.

It is further ordered that the amount of the Cost Bond herein be, and the same is hereby fixed at the sum of Two Hundred Fifty Dollars (\$250.00).

Dated at Fairbanks, Alaska, this 17th day of June, 1949.

HARRY E. PRATT,
District Judge.

Entered June 17, 1949.

Presented by:

CHAS. J. CLASBY,

One of the Attorneys for
Petitioner.

Receipt of copy acknowledged.

[Endorsed]: Filed June 17, 1949.

[Title of District Court and Cause.]

CITATION OF APPEAL

To the President of the United States of America

To: The Protestants, United States Smelting, Refining and Mining Company, Inc., and Charles Slater, and to their Attorneys Julien A. Hurley and Southall R. Pfund.

You are hereby cited to be and appear in the United States Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, with forty (40) days from the date of this Citation, pursuant to an order allowing an appeal, made and entered in the above-entitled cause on this day, in which the Petitioner, the Town of Fairbanks, Alaska, a municipal corporation, is petitioner and appellant, and the United States Smelting, Refining and Mining Company, Inc., and Charles Slater are protestants and appellees, to show cause, if any there be, why the judgment made and entered in this cause on the 31st day of May, 1949, in favor of appellees and against appellant herein should not be set aside and reversed, and why speedy justice should not be

done to said petitioner and appellant above named in that behalf.

Witness the Honorable Fred A. Vinson, Chief Justice of the Supreme Court of the United States of America, on this 17th day of June, 1949.

HARRY E. PRATT,
District Judge.

Entered June 17, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed June 17, 1949.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That, We, the Town of Fairbanks, a municipal corporation, as principal, and Reuel M. Griffin and R. M. Fenton, as sureties, all of Fairbanks, Alaska, are held and firmly bound unto the United States of America, in the sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States of America, to be paid to the said United States of America, for the payment of which well and truly to be made, we bind ourselves, our successors, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of June, 1949.

The condition of the above obligation is such that:

Whereas the above bounden Town of Fairbanks,

Alaska, has filed its Petition for appeal and are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Judgment in favor of the Protestants, United States Smelting, Mining and Refining Company, Inc., and Charles Slater, entered in the above entitled Court and cause on the 31st day of May, 1949, whereby it was adjudged that the petition of the Town of Fairbanks be dismissed and awarding to said Protestants their costs and disbursements; and

Whereas said Petitioner desires to appeal from said Judgment and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said Judgment, and have given Protestants in said action, Notice of Appeal as required by law, and said Court having duly fixed the amount of Cost Bond at Two Hundred Fifty Dollars (\$250.00);

Now, Therefore, if Petitioner above named should prosecute said appeal to effect, and answer all costs that may be adjudged against it if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

TOWN OF FAIRBANKS,

A Municipal Corporation.

By RAY KOHLER,

Mayor.

Attest:

[Corporate Seal] E. A. TONSETH,
Municipal Clerk.
Principal
REUEL M. GRIFFIN,
R. M. FENTON,
Sureties.

United States of America,
Territory of Alaska—ss.

Reuel M. Griffin and R. M. Fenton being first duly sworn on oath, each for himself, deposes and says:

I am a resident of Fairbanks, in the Fourth Judicial Division in the Territory of Alaska, that I am not an Attorney, Counsel at Law, Judge, Marshal, Clerk, Commissioner, or other officer of any Court; that I am worth the sum of Five Hundred Dollars (\$500.00), over and above all my just debts and obligations, in property not exempt from execution, situate in the Territory of Alaska.

REUEL M. GRIFFIN,
R. M. FENTON.

Subscribed and sworn to before me this 20th day of June, 1949.

(Seal) CHAS. J. CLASBY,
Notary Public in and for the Territory of Alaska.
My Commission expires: April 11, 1952.

Approved:

JULIEN A. HURLEY,
Of Attorneys for
Protestants.

The foregoing bond is hereby approved this 23rd day of June, 1949.

HARRY E. PRATT,
District Judge.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Cause.]

STIPULATION RE: SETTLING BILL OF EX-
PECTATIONS AND DOCKETING APPEAL

It is hereby stipulated by and between Petitioner and Protestants by their respective counsels that Petitioner may be granted by order of the Court to and including the 15th day of September, 1949, within which to settle the Bill of Expectations and docket this case in the United States Court of Appeals for the Ninth Circuit.

Dated at Fairbanks, Alaska, this 20th day of June, 1949.

· COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Petitioner.
/s/ JULIEN A. HURLEY,
Counsel for Protestants.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR SETTLING
BILL OF EXPECTATIONS AND DOCKET-
ING APPEAL

On oral motion of Counsel for Petitioner, and the Court finding that it will be on vacation from July 20 to approximately September 5, it is hereby ordered that the time for settling bill of expectations and docketing this cause on appeal before the United States Court of Appeals for the Ninth Circuit be, and the same is hereby, extended to and including the 15th day of September, 1949.

Done in open Court this 23rd day of June, 1949.

/s/ HARRY E. PRATT,

District Judge.

Entered June 23, 1949.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Cause.]

STIPULATION FIXING TRANSCRIPT OF
TRIAL AS BILL OF EXCEPTIONS

Comes Now Petitioner by and through its attorneys, Collins & Clasby, and protestants, through their attorney, Julien A. Hurley, and stipulate and agree that the Transcript of Trial (testimony), prepared, certified and filed herein by the Court Reporter, be deemed and taken to be the Bill of Exceptions in this cause, usable by the parties and the Appellate Court as such as fully as if settled and signed by the Judge of this Court as the Bill of Exceptions.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Petitioner,

Appellant.

/s/ JULIEN A. HURLEY,

Of Attorney for Protestants,

Appellee.

[Endorsed]: Filed July 21, 1949.

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To: John B. Hall, Clerk of the above-entitled Court.

You will please prepare transcript of record in the above entitled cause, to be filed in the Office of the Clerk of the United States Court of Appeals

for the Ninth Circuit sitting in San Francisco, California, upon the appeal heretofore perfected at said Court, and include therein the following papers and records:

1. Petition.
2. Resolution re Annexation of North Fairbanks.
3. Order Fixing Hearing.
4. Notice of Hearing.
5. Marshal's Return of Service of Notice of Hearing.
6. Affidavit of Publication of Notice of Hearing.
7. Answer of United States Smelting, Mining & Refining Company.
8. Answer of Charles Slater.
9. Reply to Answer of United States Smelting, Refining and Mining Company.
10. Reply to Answer of Charles Slater.
11. Transcript of Trial.
12. Judgment.
13. Notice of Appeal.
14. Stipulation re Printing of Record.
15. Petition for Allowance of Appeal.
16. Assignments of Error.
17. Order Allowing Appeal and Fixing Amount of Cost Bond.
18. Cost Bond on Appeal.
19. Citation of Appeal.
20. Stipulation re: Settling Bill of Expectations and Docketing Appeal.
21. Order Extending Time for Settling Bill of Expectations and Docketing Appeal.

22. Stipulation Fixing Transcript of Trial as Bill of Exceptions.

23. Exhibit (Map attached to Petition). Exhibits "A" and "B," Trial.

24. Praecipe for Transcript of Record.

The transcript is to be prepared as required by law and the rules and orders of this Court and the United States Court of Appeals for the Ninth Circuit and should be forwarded to said Court in San Francisco so that the same can be docketed therein on or before the 15th day of September, 1949.

Dated at Fairbanks, Alaska, this 25th day of August, 1949.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Aug. 25, 1949.

In the District Court for the Territory of Alaska,
Fourth Judicial Division
No. 6032

In the Matter of
The Annexation of Certain Lands Known as Slater-
ville, Garden Island, and North Fairbanks.
To: The Town of Fairbanks, Alaska, a municipal
corporation.

TRANSCRIPT OF TRIAL

Mr. Charles J. Clasby, of Fairbanks, Alaska, Attor-
ney for Petitioners.

Mr. Southall Pfund, of San Francisco, California,
and Mr. Julien A. Hurley, of Fairbanks,
Alaska, Attorneys for Respondents.

Be It Remembered that upon the 23rd day of
May, 1949, at 10:00 o'clock a.m., the above-entitled
cause came on regularly for trial before the Court,
the Honorable Harry E. Pratt, District Judge, pre-
siding;

And Thereupon, the following proceedings were
had:

The Court: This was the time set for hearing in
the matter of the annexation of Slaterville; Counsel
ready?

Mr. Clasby: We are ready, your Honor.

Mr. Hurley: We are ready.

The Court: Very well, proceed.

Mr. Clasby: If the Court please, I made arrange-
ments with Mr. Potter, the surveyor, as the first
witness so he could get away, and I checked with
him at a quarter of ten, and he [*39] said he would
be here at 10:00, and if we could have a few min-
utes recess, I would like to put him on—oh, here
he is now.

JOHN FRANK POTTER

was called as a witness on behalf of the petitioners,
and after being duly sworn, testified as follows:

Direct Examination

By Mr. Clasby:

Q. Would you state your full name, please?

* Page numbering appearing at bottom of page of original
Reporter's Transcript.

(Testimony of John Frank Potter.)

A. John Frank Potter.

Q. What is your residence, Mr. Potter, Fairbanks?
A. Yes, sir.

Q. How long have you lived in and near Fairbanks?
A. Eleven years.

Q. What is your business or occupation?

A. I am a Civil Engineer.

Q. Did you take some special schooling in that?

A. Yes, sir.

Q. Where did you take that schooling?

A. That schooling was the International Correspondence School for the Engineering work.

Q. I see, and did you receive a degree?

A. No, sir.

Q. And have you—when was that that you completed that schooling? [40]

A. Oh, that was about '38.

Q. 1938? Since then what has been your occupation?
A. Engineer.

Q. Any surveying?
A. Yes, sir.

Q. And what is your present occupation?

A. Well, I am still doing engineering work. I am not active at it right at the present time.

Q. And just tell us briefly since 1938 what your surveying experience has been. Name some of the tracts you have surveyed.

A. Well, I worked for the Assistant County Engineer of Powtawatomie County, and I was employed by the Kansas State Highway Commission for about two years.

(Testimony of John Frank Potter.)

Q. Doing surveying?

A. Yes, doing surveying. And after coming to Alaska I have been active in surveying and various types of engineering work for the Army, and later as a partner in the Alaska Architectural and Engineering Company.

Q. And that is a firm that holds itself out to do surveying for the public? A. Yes, sir.

Q. Was your firm employed by the Town of Fairbanks to make a survey of the area known as North Fairbanks? A. Yes, sir. [41]

Q. Can you tell us approximately when that was?

A. You mean, that the survey was completed?

Q. Yes.

A. It was, I believe, during the month of July in 1947.

Q. And did you make the survey, yourself?

A. Yes, I was in charge of the party.

Q. And did you run the instruments?

A. Yes, sir.

Q. Took the field notes? A. Yes, sir.

Q. And you had other men in your party to do the brushing and chaining? A. Yes, sir.

Q. Did you supervise the chaining?

A. Yes, sir.

Q. Did you make a map, or project your boundaries on a map? A. Yes, sir.

Mr. Clasby: I believe the plat is in the file, if the Court please. Could I use that?

(Testimony of John Frank Potter.)

Clerk of Court: Petitioner's Identification Number "1."

(Petitioner's Identification Number "1," marked.)

The Court: Wasn't that a part of the Pleadings, Mr. Clasby? [42]

Mr. Clasby: Yes, we filed it as a part of the Pleadings. Perhaps it doesn't need to be introduced as an exhibit.

The Court: Well, I don't think it does.

Q. I will hand you this and ask you if you know what it is?

A. That is a map showing the boundary survey of the proposed addition to North Fairbanks, as we ran the survey in July, 1947.

Q. By whom was this map prepared?

A. The Alaska Architectural and Engineering Company.

Q. By yourself, under your supervision?

A. Yes.

Q. Does this map show the exterior boundary of the area proposed to be annexed, according to the survey made on the ground by yourself?

A. Yes, sir.

Q. Could you point out the place of beginning?

A. The place of beginning was Corner number 1 on the boundary survey, which is identical to the Corner number 7, survey 806, U. S. Survey 806 Amended.

Q. Is that a monument that is in existence?

(Testimony of John Frank Potter.)

A. No, Corner number 7 is not a monument that is in existence. That was re-established.

Q. You re-established it and began your survey from there? A. Yes, sir.

Q. All right, and then what course and distance did you run [43] on your first leg?

A. The line between Corner number 1 and 2, South 70 degrees and 17 minutes East, 418.9 feet.

Q. And then you established that point on the ground? A. Yes, sir.

Q. And then what was the next course and distance that you marked out on the ground?

A. Corner number 3.

Q. What was the course and distance to that point? A. South 78° 39' East, 300 feet.

Q. And then from that point did you go to another point set out on the ground, called Corner number 4?

A. Well, these points were not established points; previously established points.

Q. I understand. You didn't actually leave a permanent post there, but you made a turning point, didn't you? A. Yes.

Q. And you moved your instrument to these various points each time to converse your course and distance? A. Yes.

Q. Then you projected to a course and distance at point number four?

A. That is right. South 48° 31', East, 258.0 feet.

Q. And then you projected a course and dis-

(Testimony of John Frank Potter.)

tance to point number five. And what was that course and distance? [44]

A. That was South 26 degrees 18 minutes East, 286 feet.

Q. And then you projected a course and distance to point number 6. Would you give us that course and distance?

A. South 40 degrees 59 minutes East, 152.37 feet.

Q. And then you projected a course and distance to point number 7. What was that course and distance?

A. South 30 degrees 43 minutes East, 165 feet.

Q. And then you projected a course and distance to corner number 8. What was that course and distance?

A. South 12 degrees 51 minutes West, 50 feet.

Q. And then you projected a course and distance to point or Corner number 9. What was that course and distance?

A. South 34 degrees and 49 minutes West, 98.5 feet.

Q. And then you projected a course and distance to point number 10. What was that course and distance?

A. South 60 degrees 45 minutes West, 84 feet.

Q. And then you projected a course and distance to point number 11. What was that course and distance?

A. South 74 degrees 40 minutes West, 188 feet.

Q. And then the next course and distance you

(Testimony of John Frank Potter.)

projected was to point number 12. Will you give that course and distance, please?

A. North 47 degrees 28 minutes West, 32.2 feet.

Q. And then you projected a course and distance to point number 13. Would you give us that course and distance? [45]

A. North 83° 58' West, 147.4 feet.

Q. And you projected a course and distance to point number 14. Would you give us that course and distance?

A. North 88° 58' West, 100.0 feet.

Q. And then the next point to point number 15, would you give us that course and distance?

A. South 59° 56' West, 220.2 feet.

Q. And then the next course and distance to point number 16, would you give us that?

A. South 52° 40' West, 304.87 feet.

Q. And the next course and distance to point number 17, please?

A. South 30° 51' West, 228.1 feet.

Q. Is that the point at which the Noyes Slough joins the meander line of the Chena River?

A. That is right.

Q. And then where did you go?

A. Continued downstream along the North bank of the Chena River.

Q. And what was your course and distance, then, to point number 18?

A. South 79° 50' West, 305.18 feet.

(Testimony of John Frank Potter.)

Q. And what was your course and distance to point number 19?

A. South $68^{\circ} 51'$ West, 156.65 feet.

Q. What was your course and distance to point number 20?

A. South $47^{\circ} 34'$ West, 233.94 feet. [46]

Q. What was your course and distance to point number 21?

A. South $40^{\circ} 45'$ West, 258.25 feet.

Q. Is point 21 on the boundary of the present Fairbanks boundary?

A. That is point number 21 is on the boundary of the U. S. Survey Number 2159, which is the North Fairbanks Survey.

Q. North Fairbanks Townsite Survey?

A. Yes, sir.

Q. I see. All right. And what is your course and distance to point number 22?

A. North $47^{\circ} 53'$ West, 178.96 feet.

Q. And what is your course and distance to point number 23?

A. North $64^{\circ} 19'$ West, 35.73 feet.

Q. What is your course and distance to point number 24?

A. North $50^{\circ} 7'$ West, 214.14 feet.

Q. And what is your course and distance to point number 25?

A. North $55^{\circ} 35'$ West, 221.8 feet.

Q. What is your course and distance to point number 26?

(Testimony of John Frank Potter.)

A. North $64^{\circ} 53'$ West, 187.96 feet.

Q. What is your course and distance to point number 27?

A. North $74^{\circ} 24'$ West, 188.71 feet.

Q. What is your course and distance to point number 28?

A. South $83^{\circ} 55'$ West, 249.75 feet.

Q. Is point 28 identical with number 5, U. S. Survey 847? A. Yes, that is right. [47]

Q. And does U. S. Survey 847—is that a contract survey?

A. No, that is the Brandt survey.

Q. Brandt sub-division?

A. Brandt Homestead Survey.

Q. And then your next course and distance is to point 29?

A. South $47^{\circ} 21'$ East, 101.64 feet.

Q. And your next course and distance to point number 30?

A. South $10^{\circ} 44'$ East, 496.32 feet.

Q. And your next course and distance to point number 31?

A. South $10^{\circ} 30'$ East, 60.06 feet.

Q. And your next course and distance to point number 32?

A. South $17^{\circ} 06'$ West, 495.0 feet.

Q. Is that corner identical with Corner Number 4 of U. S. Survey 847? A. Yes, it is.

Q. And then would you give your course and

(Testimony of John Frank Potter.)

distance to point number 33?

A. North $49^{\circ} 45'$ West, 613.80 feet.

Q. And the course and distance to point number 34?

A. North $49^{\circ} 47'$ West, 140.02 feet.

Q. And your course and distance to point number 35?

A. North $32^{\circ} 23'$ West, 575.12 feet.

Q. Your course and distance to point number 36?

A. North $48^{\circ} 02'$ East, 596.35 feet.

Q. And your course and distance to point number 37? [48]

A. North $25^{\circ} 14'$ East, 2368.02 feet.

Q. And your course and distance to point number 38?

A. North $76^{\circ} 04'$ East, 524.6 feet.

Q. And your course and distance to point number 39?

A. South $24^{\circ} 51'$ East, 533.2 feet.

Q. And your course and distance to point number 40?

A. South $39^{\circ} 00'$ East, 198.0 feet.

Q. When you reached this point 40 with your instrument, what did you do?

A. Well, we ran the closing line to Corner number 1.

Q. You closed from that point of your instrument to the point at which you began your actual survey on the ground, and what was the course and distance?

A. South $44^{\circ} 30'$ East, 554.4 feet.

Q. Now, was your survey largely along the lines of surveys that had previously been made?

A. Well, there were numerous surveys that our survey tied into.

(Testimony of John Frank Potter.)

Q. Had you picked up points on Land Office—
U. S. Land Office Surveys as you went around?

A. Yes.

Q. And I notice that a great deal of your survey was along meander lines. What did you do, just go from point to point along the river bank at ordinary high water, or try to follow existing survey points?

A. Tried to follow existing survey points as far as we could.

Q. You had the field notes with you of existing survey points?

A. That is right.

Q. And the area that you surveyed lies contiguous to the present boundaries of the Town of Fairbanks, does it not?

A. Yes, sir.

Mr. Clasby: I think that is all.

Cross-Examination

By Mr. Hurley:

Q. Mr. Potter, I notice on this map by which you have just testified, that there are certain portions of the area that are marked off in blocks, and did you make that survey, or did you just put that in according to some other survey that had been previously made?

A. You mean——

Q. (Interposed) This portion here (indicating), where it is marked "Slaterville."

A. That is right, that is just shown more or less for orientation of the map.

Q. You just put that in from other surveys and not from your own survey?

(Testimony of John Frank Potter.)

A. That is right.

Q. I see. Now, is that also true of North—this area marked “North Fairbanks Survey Number 2159”? [50]

A. Well, the boundary of that was established by this survey.

Q. Yes, but I mean the division?

A. Oh, yes, that is right.

Q. And is that same true with the Brandt Homestead Survey Number 847?

A. That is right.

Q. Did—do you know what the area is that is contained in this survey, approximately?

A. It was calculated. I don't have the notes with me right now.

Q. You don't know how much area there was?

A. No.

Q. Have you got that information?

A. Our notes were destroyed in the fire and I am not sure whether the city had a copy of those notes, or not.

Q. You don't know how much of this—— (interrupted).

The Court: I can't hear what he is saying. Did you catch that (to reporter)?

A. I am not sure if we had a copy of the notes. They were destroyed by fire, all our notes, unless the city had a copy.

Q. You don't know how much of this area has been set off in lots and blocks?

(Testimony of John Frank Potter.)

A. What area do you mean? [51]

Q. Of the area sought to be annexed, that is described here. You don't know how much of it was set off in lots and blocks?

A. What portion?

Q. Yes, or the number of acres?

A. No. No.

Q. I see. Now, do you know where the area that is described, is located, that belongs to the United States Smelting, Refining and Mining Company?

A. No, their property boundaries were not established, and they are not shown on the map.

Q. Well, don't you know where the main portions of their land is located?

A. You mean the portion of their land that is encompassed in this survey?

Q. Yes. A. Yes.

Q. Where is it?

A. That is included in this survey 806 in the Amended Survey 806.

Q. That is F. E. Company, or U. S. Smelting, Refining and Mining Company land?

A. Most of it. Most of it in this area.

Q. And how about this area here (indicating)?

A. No, that is Railroad property in there.

Q. That is Railroad property. Now, the area that you say—— [52] (interrupted).

The Court: What are you speaking of Mr. Hurley? You are saying "here."

Mr. Hurley: Well, I mean this area here that

(Testimony of John Frank Potter.)

he pointed to is marked "A.R.R. Terminal Reserve," I guess.

Q. Now, calling your attention to Survey number 806, you say that is—belongs to the U. S. Smelting, Refining and Mining Company? That (indicating)?

A. Portions of it; not all of it.

Q. Well, what—the main portions of it belongs to them, does it not?

A. That is right.

Q. And how about the—and this (indicating), marked "Steese Highway"—this road that runs along to the right of Survey Number 806, that is the main highway that goes out from Fairbanks, isn't it?

A. Yes, sir.

Q. Towards Circle?

A. Yes, sir.

Q. Does the United States Smelting, Refining and Mining Company own this block of ground on the right hand side of the road of the Steese Highway, as you go out?

A. Yes, sir.

Q. Are there some houses on a portion of that ground?

A. Yes, sir. [53]

Q. Are there any homes or cultivated land of any kind on this area known as U. S. Survey area 806?

A. You mean exclusive of the area?

Q. I mean this area here (indicating), that is on the west side of the Steese Highway?

A. No, sir.

Q. Referred to as Survey Number 806?

A. Not to my knowledge.

Q. And that is used by the United States Smelting, Refining and Mining Company for a power

(Testimony of John Frank Potter.)

house and garage and office building in connection with their operations, is it not? A. Yes, sir.

Q. And about what is the area of that portion of the property that is owned by the United States Smelting, Refining and Mining Company, approximately the area? Would you say about twenty acres? A. Possibly.

Mr. Hurley: I think that is all. Just a second (pause). That is all.

Mr. Clasby: That is all, Mr. Potter. If the Court please, we would like to have about five minutes recess. I have to get this a little closer in shape here.

The Court: All right, we will take a five minute recess.

(Whereupon, Court was recessed for five minutes.) [54]

Mr. Clasby: Call Clara Erickson.

CLARA M. ERICKSON

a witness called on behalf of the Petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Clasby:

Q. Would you state your name, please?

A. Clara M. Erickson.

Q. Are you a resident of Fairbanks?

A. Yes.

Q. How long have you lived in Fairbanks?

A. Three years last December.

(Testimony of Clara M. Erickson.)

Q. And are you employed? A. Yes.

Q. And what is your official capacity?

A. Assistant to the Land Registration Agent.

Q. And is that a Territorial Office that handles land registrations under the Act of Legislature known as Chapter 49 of the Session Laws of 1945?

A. Yes, it is.

Q. And where is your office?

A. In the District Land Office.

Q. Here in Fairbanks? A. Yes.

Q. And is there files in that office, registrations of title [55] to lands within the Fourth Division?

A. Yes.

Q. Are those records kept in your official custody? A. Yes, they are.

Q. Is there any other employee that has anything to do with those records?

A. Not in this Land Office.

Q. You are the sole employee? A. Yes.

Q. And have you examined the area sought to be annexed in this proceeding known as North Fairbanks? A. Yes, I have.

Q. And are you familiar with it, the boundaries of it? A. Yes.

Q. And do the registrations in your office cover the ownerships within that area?

A. They cover the ownerships who have declared.

Q. Who have declared their ownership in your office? A. Yes.

(Testimony of Clara M. Erickson.)

Q. Have you examined your records to determine how many persons have filed in your office as declarations of ownership covering property within the area sought to be annexed? A. Yes, I have.

Q. Have you counted those individual or separate ownerships? A. Yes. [56]

Q. And what is the total?

A. These individual ownerships, or counting husband and wife really filed on the declarations, there are 109.

Q. I mean, total in the area, whether they signed the petition or not.

A. I believe there are 216.

The Court: Two hundred what? A. 16.

Q. And I thought you had examined those records yesterday and today and found a little different figure than that, Mrs. Erickson?

Mr. Hurley: We object to that, if the Court please; incompetent, irrelevant and immaterial for the reason that as I understand the law there must be a majority of the owners with property interests signing the petition under the Code. It provides, I think, the ownership as far as that part of the proceeding is concerned, would depend upon the time that the petition was filed. It says "shall file in the District Court for the Judicial Division wherein the city is located, a petition signed by a majority of the owners of substantial property interests in land or possessory rights."

(Testimony of Clara M. Erickson.)

The Court: In other words, you——(interrupted)

Mr. Hurley: I think the number would be the number on the day the petition was filed.

Mr. Clasby: Well, I will withdraw that question. [57]

The Court: Very well.

Mr. Clasby: And I will proceed to another question and then come back.

Q. Have you examined the petition that has been filed in Court in this proceeding?

A. I have not had a chance, or been furnished the petition, itself.

Q. I mean, have you examined the names?

A. Yes, I have examined the names.

Q. And have you compared those names with your records?

A. Yes, I have.

Q. To determine whether or not any of those people had registered?

A. Yes.

Q. And have you determined the number that have registered?

A. Yes, I have the number that have registered—that have signed this petition.

Q. That have signed this petition. How many of these persons that have signed the petition were registered on November 8, 1948?

A. There were 107 registered, as of that date, and one transfer immediately afterwards.

Q. One transfer that was in the mail on that date?

(Testimony of Clara M. Erickson.)

A. I don't think it was in the mail.

Mr. Hurley: Then I move that part of the answer be [58] stricken out.

The Court: Which part?

Mr. Hurley: In which she says there was a transfer made after the 8th day of November, 1948. She said there was 107, as of that date, whose names appeared on the petition. Then she said there was one transferred.

The Court: Very well, that may be stricken.

Q. Now, have you examined your records in the Land Office to determine the number of persons registered, who did not sign the petition, as of November 8, 1948?

A. As of the notes I made on the day that I gave the deposition, there were 216 registered.

Q. That was a month later. Now, what I would like to know, Mrs. Erickson, how many persons on November 8, 1948, were registered, but did not sign the petition, if you have any notes to show that. Are these notations here in your handwriting?

A. Yes.

Q. When were those notations made?

A. Those were made December 8, I believe, as of the date the petition was filed.

Q. And how many persons, refreshing your memory from those notes, were there——(interrupted).

Mr. Hurley: I would like to have it a little more definite as to what notes she is referring to. [59]

(Testimony of Clara M. Erickson.)

The Court: Yes. Objection sustained.

Q. Well, did you make an actual count of those persons who had registered, but who had not signed the declaration on November 8, 1948?

A. According to my notes, there would be 103.

Q. Well, did you make an actual count?

A. Yes.

Q. Did you make notes of the actual count?

A. Yes. The notes are in pencil on the back of the list.

Q. Of 103? So the total of 107 and 103 is 210, is that correct?

A. Well, that is correct, but I think you should check back against the petition.

Q. Yes, but what I am driving at, Mrs. Erickson, I would like to know the most accurately you can give it, the total number of persons who are registered in the Land Office, irrespective of whether they signed the petition or not, and as I get it, from how many signed the petition and how many didn't sign the petition, the total is 210, is that correct?

A. That I am not sure, because I had no time this morning to make another check.

Q. But those are according to your notes at the time?

A. Those are according to the notes I have. I had no time to make a check.

Q. The best, to your testimony, is 210, is that right? [60]

(Testimony of Clara M. Erickson.)

Mr. Hurley: We object to that. She already testified it was 216.

The Court: Well, he can clear the matter up. Objection overruled.

Q. Is that right? A. Correct.

Mr. Clasby: That is all.

Cross-Examination

By Mr. Hurley:

Q. Would the Land Office records, if a man who had declared his ownership and had sold the property prior to the 8th day of November, 1948, there would be nothing in the Land Office to show that change unless the man that bought it came up there and filed another declaration?

A. No, there is nothing to show unless the new owner files.

Q. I see. And for instance, I think on the list, if you have checked it, you will find that a man by the name of Jack Taylor—he was 111. Have you got the list? He was 111 on the list. Jack Taylor and Frances Taylor, I think it was. It would be 198 and 111 on the list, if you have got one there of the petition, you will find they are numbered. I don't know whether—yes, they are numbered on the petition.

Mr. Clasby: What is your question, counsel?

Mr. Hurley: I just wanted to know if it didn't show in her office, in the Land Office, that they had filed a claim [61] for registration of title and that

(Testimony of Clara M. Erickson.)

it appeared there as of November 9, and it still showed there in their name as title—Frances Taylor and Jack Taylor?

A. I have the registration for Frances and Jack Taylor.

Q. And it showed that way on November 9—or, November 8, 1948?

A. Yes. There has been no turn over in title, according to my records.

Q. But if a deed was executed by them, transferring the property in August, 1948, and according to the Commissioner's Office, it wouldn't necessarily show in your office. You didn't check the Commissioner's Office to see if there had been any transfers?

A. No, I don't check the Commissioner's Office.

Q. I see. Now, you said in your direct examination that you—your figures showed 216 people had declared ownership in this proposed area that is—they seek—that is sought to be annexed. What did you take that from, from all the records of all the land in the area?

A. All the declarations that I hold in the office over that area.

Q. And that was 216 of them?

A. Yes, at that time.

Mr. Hurley: That is all.

Examination by the Court

Q. Just a moment. These people who registered,

(Testimony of Clara M. Erickson.)

now, did people [62] who had contracts to purchase, did they also register?

A. Yes, your Honor, some of them.

Q. And this number that you are giving were not necessarily people who claimed to own in fee simple? That would include people who had contracts to purchase, would it?

A. Yes, it did include some.

Q. And any mortgagees also register in that list?

A. Well, they register as contract of sale. That is all I have on my—— (interrupted).

Q. So that the 216 would include not only people who owned land, but those who had contracts to purchase, or mortgages on the land?

A. Yes, those that filed.

Q. And you don't—do you know how many people actually claimed to own the land and made declarations?

A. Would you clarify that a little?

Q. Did you make any distinction between a person who filed stating they owned the land, and a person who merely said they had a contract of sale?

A. On the records he just states a contract of sale as evidence of ownership, or if he owns it outright, he states a deed and where it is recorded.

Q. In other words, anybody with a contract of sale or a mortgage, would be called by you as an owner?

A. Yes, as far as I am concerned.

Q. And you don't know how many there were

(Testimony of Clara M. Erickson.)

who actually stated that they were owners, aside from those having contracts of sale?

A. They state—if he states that he is an owner, I take it for granted that he is.

Q. Did you require them to produce some evidence of their ownership?

A. No. The law states that they must swear before a notary or before two witnesses.

Q. And they don't have to show any deed or anything of that sort?

A. And the law doesn't ask them to show a deed.

Q. So at the present time, you don't know how many of those 216 stated they were owners and how many stated they had contracts of sale, do you?

A. I can check back in the records, if you will give me a minute, and see.

Q. I am just asking you right now if you know?

A. No, I can't say, off-hand, without looking.

The Court: That is all.

Mr. Clasby: Just a moment.

Redirect Examination

By Mr. Clasby:

Q. I notice that so far as the registration, the persons that have signed the registrations are concerned, that there are [64] seven who, at the time they signed the petition, held under contracts of sale. Of those seven, have you determined how many, before November 8, filed declarations showing their deed?

(Testimony of Clara M. Erickson.)

Mr. Hurley: I didn't—you say the petition that you filed says that there is that many claims?

Mr. Clasby: That is what the people said here.

Mr. Hurley: Oh, on the petition, they signed. I just didn't understand that.

A. I have a note there about the contracts of sale on that little piece of paper. The people who would not have owned their property by November 8 were Thomas D. and Ruthellen Heath, who were owners as of 11/15/48. Alden and Muriel Wilbur, who are still under sales contract, and Herschel Harter and Mrs. Pat Harter, owners as of 2/1/49.

Q. And in giving this total figure, you didn't count Thomas and Ruthellen Heath, as I understand it, because that is the declaration you received in the mail after November 8? A. Yes.

Q. So they are not counted?

A. They are not counted.

Q. So you have a registration for Alden Wilbur, is that correct? A. Yes.

Q. And he signed the petition? [65]

A. Yes, he did.

Q. And that registration showed that he held under a contract of sale? A. Yes.

Q. And I will see if I can find that. Does his registration show for himself and his wife?

A. It just shows Alden L. Wilbur.

Q. I see. So that is one of the 109 registered owners—this is according to your records—holding under a record of contract?

(Testimony of Clara M. Erickson.)

A. Mrs. Wilbur was not counted.

Q. But Alden was counted?

A. Alden was counted.

Q. All right, now, Herschel Harter and Mrs. Pat Harter. Their registration wasn't filed as of November 8, was it?

A. No, it was filed as of February 9, 1949.

Q. So you didn't count those two people in counting either your figure of 109, or your figure 210, being the total?

A. No, they were not counted.

Q. So then actually, there is only this one contract of sale that is taken account of by you in any of your computations? A. Yes.

Q. Except in this, that of the 103 persons who have registered, but did not sign the petition, you don't know how many of those may have had a contract of sale as the basis? [66]

A. No, I wouldn't know.

Q. You haven't checked that particular group for that particular purpose?

A. No, I haven't check those.

Mr. Clasby: That is all.

Further Examination by the Court

Q. Just a minute. For instance, there is Merry McAllister. Do you know whether that person made a declaration of title?

A. Yes, she did. It was recorded February, 1948.

Q. And is she down there? Do you have her down there as an owner?

(Testimony of Clara M. Erickson.)

A. Yes, she has given a deed as a title of evidence.

Mr. Clasby: Does she show a deed?

A. Yes, her title is checked as a deed.

The Court: It seems to me it is a title of purchase.

A. Excuse me, Judge, she has checked U. S. Patent, and she says it is recorded in the Fairbanks Recoding Precinct.

Mr. Clasby: My records only show she says "Escrow, Ken Murray's."

The Court: It seems on the petition, to be "contract of sale. Escrow is in Kenneth Murray." This is Merry McAllister. That is the one, is it?

A. Yes, and may I make a correction? She states the day acquired it, 8/16/48, and the filing as of August, 1948.

Mr. Clasby: And the petition shows the contract apparently [67] was May, '46.

Q. Now, how about Louis E. Johnson. Do you have him down there? Do you have it alphabetically, those who made the declarations?

A. No, I have them according to the petition.

Q. Louis E. Johnson?

A. And Nadine M. Johnson?

Q. Yes. A. They have not filed.

Q. And Mrs. A. H.—let's see, it would be—well, it is number 15. I can't read the initials. A. E. Lowman and Mrs. A. L. Lowman. Yes, A. R. Low-

(Testimony of Clara M. Erickson.)

man. Now this is number 15. The man. What do you have down for him?

A. He has filed his petition January 19, 1948, where he has filed his declaration, and he states the date he acquired it was 1/17/48.

Q. Does he claim to be an owner?

A. He doesn't state.

Q. He doesn't say he is an owner?

A. He doesn't state anything. He says he acquired it from Kathryn Lanier.

Q. And Mrs. A. R. Lowman, number 16?

A. She has filed with him. Agnes R. Lowman.

Q. That is the two together?

A. That is Mrs.

Q. And you recorded those as two owners, or one? [68]

A. They are two registered owners. One is owner and the other co-owner.

Q. And number 25. What do you have for him?

Mr. Clasby: Samuel C. Wilhaite.

A. He has not filed a declaration of ownership.

Q. Or his wife? Number 27, David V. McKeag?

A. David McKeag, Jr., and Mary McKeag filed as of June 29, 1946.

Q. And do they claim ownership or contract of sale? A. Claim ownership by a deed.

Mr. Clasby: I note that they claim their deed is at the Recorder's Office, or the title at the Recorder's Office, on the petition.

The Court: Yes. The trouble is that they put ditto marks down. The man above first had

(Testimony of Clara M. Erickson.)

“owner,” and then put contract of sale. I couldn’t tell whether the ditto referred to “contract of sale,” or “owner.”

Q. Now, for instance, number 32. Barbara Williams, is down here as a co-owner. Do you have her name to show—is there a statement to show how she became a co-owner?

A. I think probably she is the wife of the owner.

Q. Nothing to show why she claimed to be a co-owner.

A. No, the declaration is made out to Barbara G. Williams and James Arthur Williams.

Q. Who made the declaration? [69]

A. Barbara Williams has signed it.

Q. And did he sign it at all?

A. No. The one who makes the declaration signs it.

Q. And then you put down the two owners from that one declaration?

A. Yes, just as a co-owner.

Q. And is there any limitation as to—for instance, can anybody come in and say they and somebody else are owners and you record it that way?

A. Well, the Attorney General contends the ownership rests between the two claimants and not between us and the claimants.

Q. Well, anyway, just anybody comes in and—say, if they picked out five people and say, we five are the owners, you would put it down as five own-

(Testimony of Clara M. Erickson.)

ers the same as if the other four had made the affidavit?

A. Provided he swears to it before a Notary.

Q. And your records then, of the number who had declared, would include quite a number of people who didn't, themselves, make any declaration, wouldn't it?

A. Well, if four or five people owned the property, if they are co-owners, one person can put in a declaration for all, listing the co-owners.

Q. So your records are not—you are not testifying that 216 people actually swore that they were the owners, you are [70] just testifying that either they swore, or someone swore for them?

A. Yes.

Q. 104. Richard R. Jones. Contract of sale, it says on the petition. What does your record show?

A. Well, Richard R. Jones has not filed any declaration.

Q. 107. Herschel J. Harter?

A. Herschel J. Harter filed his declaration February 9, 1949, which was too late to be counted.

Q. You didn't count that?

A. No, it is not counted.

Q. Nor his wife's?

A. Or his wife's, either.

Q. 123. Harold W. Richardson?

A. Harold W. Richardson filed on August 19, 1948, but he had waited past the calendar year, so

(Testimony of Clara M. Erickson.)

he was delinquent, but that is the date of his filing.

Q. He is not included?

A. Yes, he is included, because we must accept them as of the date they come in, whether they are delinquent or not.

Mr. Clasby: Does his declaration show a contract or a deed?

A. It shows a deed, and it says, "recorded."

Q. And then his wife, the next one, apparently Alma M. Richardson? [71]

A. She is not on the declaration, so she is not counted.

Q. Mary Hansen, 132?

A. Was that Eva Hansen?

Q. 132 is Mary Hansen.

Mr. Clasby: It is on the next to the last page, third from the top.

A. Her declaration was recorded October 16, 1948, showing a deed, or patent as title of evidence.

Q. Then your list then, she is an owner, is she?

A. Yes.

Q. And Rudy Grassman, 133?

A. Rudy Grassman did not file a declaration.

Q. Or Catherine Grassman?

A. Or Catherine Grassman.

The Court: That is all.

Mr. Hurley: I would just like to — are you through, Mr. Clasby? Did you want to ask some questions?

Mr. Clasby: Just one more.

(Testimony of Clara M. Erickson.)

By Mr. Clasby:

Q. I wanted to get it clear. Your testimony is 210, or 216? I have used the figure "210," and the Court used the figure "216" as being the total number of persons registered who owned land in that area?

A. I would like to recheck it.

Mr. Clasby: All right. I will withdraw the question, [72] then, for the time being. You may go ahead, Mr. Hurley.

Recross-Examination

By Mr. Hurley:

Q. Calling your attention to—I think you have the petition there with the numbers in front of the names—number 12 is Louis E. Johnson and number 13 is Nadine M. Johnson, and I would like to know if there is anything in the Land Office in their names. Did they register anything in the Land Office?

A. Well, Mr. Hurley, do you mean anything in this?

Q. Any declaration in the Land Office of ownership in connection with the property they claim? Their names appear on the petition number 12 and 13.

A. No, there is nothing for the property here they claim as registered.

Q. Now, calling your attention to number 14, it says purchase contract. Now, this Ed Aldrich, number 14, was there anything in the Land Office in regard to land claimed by Ed Aldrich?

(Testimony of Clara M. Erickson.)

A. Not as of the date the petition was filed.

Q. Wasn't it claimed in the name of Patricia Aldrech?

A. No, not at that time—date.

Q. Dated 8th month, 17th day in '44?

A. She has a declaration now that is delinquent. It is not recorded because she hasn't paid the fine.

Q. But Ed Aldrech made no claim?

A. No.

Q. Now, coming down to number 20 and 21, Pat H. Willoughby and Gladys Willoughby, it says "owner," and is there anything registered under their name in the Land Office?

A. No, there isn't.

Q. Nothing registered under their name?

A. No.

Q. Now, how about 29 and 30, Francis G. and Vera N. Brown. Is there anything registered in their name in the Land Office?

A. No.

Q. Well, was there anything registered by Mr. Kilgore in regard to the property?

A. To that same property?

Q. Yes. A. No.

Q. He didn't register it in the Land Office?

A. No.

Q. Is there anything in the Land Office on number 40, Jonathan Vandermer?

A. No. He is not registered.

Q. How about Roger R. Rhodes and Emma Rhodes, who claim to be owners, F. A. 1638 I think

(Testimony of Clara M. Erickson.)

is the Land Office record. Does it show in the name of Roger R. Rhodes and Emma Rhodes, or does it show in the name of Charles Slater in the Land Office? [74] A. In the name of Charles Slater.

Q. In the name of Charles Slater. Now, we come down to number 53, R. A. Souders, and his number is F. A. 1631. Does that show in his name, or does it show in the name of Charles Slater in the Land Office? A. What number did you say he was?

Q. Number 53. Souders. Claims to be a co-owner, and it is 1631 in the Land Office registration. I say, does that register in his name or in the name of Charles Slater?

A. Mine are not numbered like yours, so I don't know just where he is.

Q. It is F. A. What does that F. A. stand for—1631.

A. I think "F. A." is the Fairbanks area.

Q. 1631 is the number as we have it here. The Land Office number. A. I can't find it.

Q. You haven't got his there?

Mr. Clasby: May I see the original petition?

A. It is not on my copy.

Mr. Clasby: We can't seem to find him on this copy anywhere.

Q. R. A. Sweeton, I guess it is. You couldn't read it, I guess. Number 53.

Mr. Clasby: Who does it follow? We couldn't read it [75] and couldn't count it, so our testimony doesn't take it into consideration.

(Testimony of Clara M. Erickson.)

Mr. Hurley: Well, it is on the list, anyway.

Mr. Clasby: If you can give us the name we will find out whether it is registered or not.

Mr. Hurley: After Heflinger there is a blank on mine.

Q. Well, that is registered under Charles Slater?

A. I would have to look in the files to see.

Q. Now, we come down to Nell H. Smith and V. Maurice Smith, and those are numbered 82 and 83. Are they registered in the Land Office in the name of Nell H. Smith and V. Maurice Smith, or under the name of Eleanor Ely?

A. In the name of Eleanor Ely.

Q. Now, we come down to 98—oh, that is Francis Taylor and Jack Taylor. I think that was registered in Jack Taylor's name, wasn't it?

A. No, there are two of them, Francis and Jack Taylor.

Q. I see. Well, that is the one I asked if you knew about a transfer in August, 1948. Now, number 117, Rachel A. Josephs, owner, Fairbanks. Was that—is that registered in the Land Office in her name?

A. No, it is registered in the name of P. V. Josephs—Pious Victor Josephs.

Q. Did Kay Jenkins make application to get it transferred or make a claim of ownership on that?

A. I don't have it.

Q. By reason of a deed from Pious Victor Josephs?

(Testimony of Clara M. Erickson.)

A. This is the only thing I have on it.

Q. You don't have any other record on that piece of ground? A. No, that is all.

Q. If there was a deed, it would be in the Commissioner's Office? But it is not in her name, Rachel

A. Josephs, in the Land Office?

A. No, it is just in his name.

Q. Just in his name. Now, calling attention to number 145, Ray Johnson, is there a record of that—is that recorded in Ray Johnson's name, or is it—I think it is F. A. 830—or is it in Roy Larson's name? A. That is in Roy Larson's name.

Q. Yes. Now, coming down to 150, Max O. Miller is listed as the owner and does the record in the Land Office—I think it is F. A. 84—does that show in the name of John Quinbo, or in the name of Max Miller?

A. There is nothing in the Land Office in the name of Max Miller.

Q. It shows in the name of John Quinbo?

A. It would have to be.

Mr. Hurley: I think that is all, your Honor.

Mr. Clasby: That is all for right now. Call Mr. Call. [77]

(Whereupon, Mrs. Clara M. Erickson was excused as a witness and left the witness stand.)

IRVING H. CALL

being called as a witness on behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Clasby:

Q. Would you state your name, please?

A. Irving H. Call.

Q. Are you a resident of Fairbanks, Mr. Call?

A. I am.

Q. How long have you lived in and about the Fairbanks area? A. Two and a half years.

Q. What is your present occupation?

A. City Manager for the Town of Fairbanks.

Q. How long have you held that office?

A. Since August 16, 1948.

Q. Are you familiar with the area proposed to be annexed to Fairbanks in this petition, known as North Fairbanks? A. I am.

Q. And does your office supervise the office of the City Engineer for the Town of Fairbanks?

A. It does.

Q. And in connection with the office of the City Engineer, do they fit in with the supervisory work for the Town of Fairbanks, [78] Alaska, for the Planning Commission? A. They do. Yes.

Q. Carry out plans for the Planning Commission?

Clerk of Court: Petitioner's Identification Number "1."

Q. I will hand you Petitioner's Identification

(Testimony of Irving H. Call.)

Number "1," and ask you to state what that is, if you know?

A. It is an area photograph of the area of Fairbanks. It was taken in May, 1948, by Reuel Griffin's Studios.

Q. And does that show the area proposed to be annexed by this petition? A. It does.

Q. So that it can get in the record will you, referring to this photograph, starting at a definite point, describe how the area sought to be annexed appears on the photograph?

Mr. Hurley: We object to that as incompetent, irrelevant and immaterial at this time.

The Court: Objection overruled.

Mr. Hurley: I would like to see it before any part of it goes into evidence.

The Court: Yes.

Clerk of Court: Petitioner's Identification Number "2."

Q. Now, would you proceed, Mr. Call, and describe, with reference to the photograph, where the boundary of the area proposed [79] to be annexed would lay on it?

Mr. Hurley: We object to it, incompetent, irrelevant and immaterial. Not the best evidence.

The Court: Probably I had better look at it, too.

Mr. Clasby: The best way to do it would be to mark on the photograph with pencil, but it is hard to make a mark that stands up clearly. If the

(Testimony of Irving H. Call.)

Court would prefer a mark, I will ask the witness to mark the photograph.

The Court: Could you draw an ink line on it? I am afraid a lead pencil wouldn't show.

Mr. Clasby: Could you draw an ink line on it, Mr. Call?

A. I believe I could. May I use the map exhibit?

The Court: Could you go ahead with something else and let him mark it during the noon hour?

Mr. Clasby: We could do that; yes.

Q. Would you describe for us, Mr. Call, the character—first, let me ask you this, are you familiar with the character of the area sought to be annexed? A. I am.

Q. You have been through it a number of times and observed it? A. I have.

Q. How long have you been familiar with the area? A. For about two years.

Q. And are you familiar with the development within the limits [80] of the Town of Fairbanks as it lies adjacent to the area sought to be annexed, or the Chena River, which separates Fairbanks limits from the area sought to be annexed?

A. I am.

Q. Are you familiar with an area known as Graehl Townsite? A. I am.

Q. And are you familiar with the areas beyond the area sought to be annexed, Bentley's Dairy, Creamer's Dairy, Lemeta Subdivision, Hamilton Acres, Derby Tract, and other areas?

(Testimony of Irving H. Call.)

A. I am.

Q. Now, would you describe for us, generally, the character of the area sought to be annexed, the kind of development that is in it and the extent?

A. I should say that it would be chiefly residential, with probably about ten or fifteen per cent industrial.

Q. And is some section of the area sought to be annexed, within sight of the Alaska Railroad Terminal Reserve?

A. Yes, sir.

Q. And you count those as one industrial user?

A. That was considered industrial, the per cent would probably be about thirty per cent.

Q. But you didn't consider that?

A. I didn't consider that.

Q. Now, could you tell us from the City Limit out on Cushman, or the Steese Highway, show us where the industrial users [81] are and name the industrial users?

A. The industrial users are, beginning on the Steese Highway just north of the present city limits, are the Healy River Coal Company, Fairbanks Lumber Supply Company, Union Oil Company, then there is a large sizeable piece of land that is set aside for the Alaska Road Commission, which, in itself, is not an industrial development. There is a large layout for the Petroleum Reserve, which is business and residential property at the present time, and the remainder of the property running

(Testimony of Irving H. Call.)

to the North is industrial and office space of the U. S. Mining and Smelting Company.

Q. Did you mention the Standard Oil Company?

A. I forgot the Standard Oil Company.

Q. To your knowledge, is there any vacant or unused land on the West side of the Steese Highway in this land industrial area?

A. There are sizeable tracts of land intermingled with this that can be used for considerable expansion of industrial areas. Particularly near the U. S. Smelting, Refining and Mining Company plant.

Q. That is, however, belonging to the U. S. Smelting? A. It is.

Q. In back of some of these developments, in back of the Alaska Railroad terminal there is still a little land that isn't used?

A. There is; yes. [82]

Q. But the frontage on the Steese Highway is all taken up? A. That is right.

Q. On the East—wait a minute, is there any industrial or business section in any other part of the area? Or is it all residential?

A. I would say it was all residential. The area which is now occupied as Slater Camp by the U. S. Army is a combination of residential and you might say, business. It is military purpose.

Q. That is, they have one military station there?

A. Established there.

Q. And on the photograph, does the Slater

(Testimony of Irving H. Call.)

Camp area show as 14 elongated buildings in the center foreground? A. Yes, sir.

Q. And there is streets down by them, and they are laid off, it looks like about two blocks of property? A. That is correct.

Q. That is the installation you refer to as the Army installation, is that correct?

A. That is right.

Q. And it absorbs nearly all the property laying between the lots and blocks called Slaterville, and the North to the Noyes Slough, is that correct?

A. That is correct.

Q. Now, directing your attention to the portion of this map [83] marked off in blocks, called Slaterville, which extends in its Northermost extremity from along the East side of the Army development, Noyes Slough, around in the junction of Noyes Slough and the Chena River and over Westerly, I guess, almost to the Steese Highway, goes to a last street called Boundary Street on the plat. Are you familiar with that? A. I am.

Q. Are those lots actually out there, marked off on the ground?

A. The blocks are marked off on the ground. I do not know how many of the lots inside the blocks are marked.

Q. Have you observed those blocks?

A. I have observed the blocks, yes.

Q. Have you noticed very many vacant lots?

A. There are numerous vacant lots and there

(Testimony of Irving H. Call.)

are numerous buildings completed, and there are numerous buildings under construction.

Q. And just giving your best estimate, what would you say would be the per cent that has been built up? A. Thirty per cent.

Q. This area is 30 per cent improved with houses? A. (Witness nodded.)

Q. And then between Boundary Street and the Steese Highway, there is a little section which I think is the North Fairbanks Townsite addition, about four or five blocks in there. Is that almost one hundred per cent improved with buildings [84] and dwellings?

A. Not a hundred per cent. There is a sizeable area there that has low lands that will—that is near the slough and is not suitable for residence, and is now used as a storage area for salvage material.

Q. I see. That is this little “L”—what looks like, on the map, a little “L” in block 6?

A. No, it would be adjacent to Slough Street, southerly of block 7.

Q. I see. Other than that, that is developed. Now, I direct your attention to the portion of this map marked “Homestead.” Has that homestead been broken up into lots and blocks?

A. Yes.

Q. As a matter of fact, there is very little if any of it still owned by Mrs. Brandt, isn’t that correct?

A. According to my information that is correct.

(Testimony of Irving H. Call.)

Q. And isn't it true that that is almost entirely developed?

A. The majority of the land above the high water mark, above the flood mark of the river is developed.

Q. There is one section where the old homestead was, about two acres, that is still a field right on the bank of the river, is that correct, that isn't developed, and then there is a building in there called a brewery, used for storage. That is to some extent commercial, and then in block 8, I guess it is a portion of block 9, there is the Alaska Freight Lines Main shops, isn't that correct?

A. That is correct.

Q. And those are the only two industrial users that you know of in that area, is that correct?

A. That is right.

Q. Now, on this map there is nothing shown on the East side of the Steese Highway from block 8 and 9, North addition to Fairbanks Townsite, North to Noyes Slough. However, to your knowledge, is that improved?

A. That is improved as a tract property.

Q. I see, the U. S. Smelting owns a block of houses, almost a block of houses directly North of block 8, do they not?

A. That is correct.

Q. And then, on out, right on the Slough, there is a substantial housing, is that not correct?

A. That is correct.

(Testimony of Irving H. Call.)

Q. And is there any Army quarters back in there that happens to be on their land?

A. I do not believe so. There is a well in that area that is on their land.

Q. That is a well where they get water, or could get water for their power house, is that correct?

A. That is correct.

Q. Now, directing your attention on out from this property, across Noyes Slough, is there any residential areas developed [86] out beyond there?

A. I would say directly—slightly Northeast from the Northerly portion of the United States Smelting and Mining Company is the development known as the Lemeta, across the Slough.

Q. And intervening, then, it and the U. S. Smelting, is merely the Noyes Slough and the Railroad right of way?

A. That is correct. There is a large bend in the river, which is not developed at the present time.

Q. How large a development is this Lemeta subdivision?

A. A very substantial homesite development with restricted lands—deeds restricted to frame dwellings.

Q. About three or four hundred lots in there?

A. I imagine about three or four hundred lots.

Q. And is it broken up into streets?

A. It is broken up into streets. The streets are graveled. There is electricity in the area and it is

(Testimony of Irving H. Call.)

at the present time being occupied very—to a large extent by people who are starting homes. Mainly people who have homes completed.

Q. I see, and that highway leads on out to a place known as College, Alaska, is that not correct?

A. That is correct.

Q. And about how far out is that?

A. College? About six miles.

Q. And is the area between College and Fairbanks gradually [87] building up with residences?

A. It is.

Q. And also just across the Slough from the area proposed to be annexed, lies the road that goes to Circle?

A. Yes, sir.

Q. And what is the character of the land along through which that road goes?

A. Well, leaving the bridge where the Steese Highway crosses the Noyes Slough, it proceeds in a Westerly direction, through Bentley's Dairy farm. Up until a year ago Bentley's Farm was strictly farming property, and it was in pasture, but has been converted to industrial use, a portion of it. It goes over about three-quarters of a mile from the bridge crossing of Noyes Slough where there is a junction that turns into Graehl, that portion to the North being known as the Derby Tract, and the Southerly area being the Graehl Section.

Q. Now, does the Graehl section, or part of it, show on this map, Petitioner's Identification Number 1?

(Testimony of Irving H. Call.)

A. Yes, it does, on the left hand side.

Q. The center on the left hand side?

A. That is right.

Q. And it follows Noyes Slough around and lays somewhat between the area South to be annexed and the Town of Fairbanks actually as it follows through, is that correct? [88] A. Umhummm.

Q. And now, this point three-quarters of a mile away where you speak of, is that where the Derby tract development starts? And that is just barely off the picture to the left, is that correct?

A. Yes.

Q. And is there a fairly substantial residential development there?

A. In the Derby Tract it is not very intensively developed. There are several homes and the lots that were laid out were large lots. The Graehl Section is highly developed.

The Court: Your proposed annexation doesn't take in Graehl, does it?

Mr. Clasby: No, this does not take in Graehl.

Q. Then, even beyond the Derby Tract, is a development known as the Hamilton Acres. Are you familiar with that? A. Yes, sir.

Q. And that lays adjacent to the Derby Tract and adjacent to the East boundary of the Graehl Townsite, isn't that correct?

A. I am not absolutely sure about the boundaries. I do know Hamilton Acres section which is now under development and has been developed

(Testimony of Irving H. Call.)

as residential property, does start at approximately the Northeast—yes, the North—Northeast corner of the Derby Tract. [89]

Q. And actually it extends down to the waterfront; just a bare corner of it is on the picture opposite an island in the middle of the picture on the extreme left, which island is known as Bentley's Island. At that point it joins the Graehl Townsite?

A. That is my general information. I have never seen an official photograph of the Hamilton Acres second division, you might say.

Q. Is there quite an area of the Hamilton Acres subdivision that has been subdivided and platted and lots sold?

A. The piece with which I am familiar lies Northerly of the railroad siding. I have never seen the property of that section lying Southerly of the railroad site. I know it exists, and there is a rough sketch in the office, indicating the total area, but I have never seen a plat or a layout.

Q. Are there about 125 lots in the area North of the highway?

A. I believe there is that many, yes.

Q. And that has all been sold to persons intending to build, or who have built; is that according to your information?

A. My information is that about sixty per cent of them are sold of the Hamilton Acres section North of the railroad site.*

(Testimony of Irving H. Call.)

Q. Now, on this photograph across the middle distance of the photograph, is a very congested area. Would you state what [90] that is, if you know?

A. Are you referring to the area adjacent to the river?

Q. Yes.

A. The land which lies above the meandering stream, which is known as the Chena River, is the Townsite of Fairbanks.

Q. I see, and I notice that the Chena River practically circles it, or does circle it on three sides?

A. That is correct.

Q. And is there a military reservation that lays to the East of the Town of Fairbanks, and South?

A. Lies to the Southeast of Fairbanks.

Q. And then what is it that is shown as a streak across the middle right of the picture?

A. The white streak is the area known as Weeks Field Airport field.

Q. And airfield runway?

A. Correct. Airfield runway.

Q. And that runs from the center of the picture over to the river?

A. Correct.

Q. In your opinion as City Manager, is it almost imperative that if the town continues its present growth it will grow completely into the area sought to be annexed and continue the growth on through that area, as demonstrated by the Lemeta Subdivision and these other subdivisions (interrupted).

Mr. Hurley: We object to that as incompetent,

(Testimony of Irving H. Call.)

irrelevant and immaterial. Calling for a conclusion. No proper foundation laid for its admission in evidence. Nothing to show that he ever made a survey or is qualified.

The Court: Objection overruled.

Mr. Clasby: Would you answer the question?

A. I would say that—would you please state it again?

Q. My question was, isn't it, is it your opinion that the town of Fairbanks, in continuing to grow, will completely fill the area proposed to be annexed, and carry on its present tendency, as demonstrated by the Lemeta and other subdivisions, and by growing on from the other areas proposed to be annexed, not West and Southwest?

Mr. Hurley: We object to it; incompetent, irrelevant and immaterial. Leading and suggestive. No proper foundation laid.

The Court: Objection overruled.

A. Oh, I believe it is very imperative all the sections adjacent to Fairbanks be annexed.

Q. I am asking you, in your opinion, is that the logical course of development?

A. That is the logical course of development.

Q. And in the past three years, has there been a considerable tendency towards that? [92]

Mr. Hurley: Object to that; incompetent, irrelevant and immaterial. Not the best evidence; calling for a conclusion.

The Court: Objection overruled.

(Testimony of Irving H. Call.)

A. It is.

Q. Do you know how old this Lemeta Development is?

A. About a year and a half.

Q. And do you know how old the Derby Development is?

A. To the best of my knowledge about 8 years.

Q. And do you know how old the Hamilton Acres Development is?

A. It is about a year and two months.

Q. Do you have any idea—withdraw the question. Is the area (interrupted).

The Court: Perhaps we had better take a recess at this time.

(Whereupon, at 12:00 o'clock noon, court was recessed until 2:00 o'clock p.m.)

Be It Remembered, that at 2:00 o'clock p.m., the trial of the above-entitled cause was continued, the above-named parties being present in court; the Honorable Harry E. Pratt, District Judge, presiding;

And Thereupon, the following proceedings were had:

The Court: Counsel ready to proceed?

Mr. Clasby: Ready to proceed.

Mr. Hurley: We are ready, your Honor. [93]

(Whereupon, Mr. Irving H. Call, the witness on the stand at the time of the noon re-

(Testimony of Irving H. Call.)

cess, resumed the stand for further direct examination.)

Q. Mr. Call, have you marked on Petitioner's Identification Number 1, an aerial photograph, the approximate boundaries of the area proposed to be annexed? A. It is. It is marked in ink.

Mr. Clasby: We ask that this be admitted as an exhibit.

Mr. Hurley: We object to it as incompetent, irrelevant and immaterial. No proper foundation laid. Not properly identified.

The Court: Objection sustained.

Q. Now, I will ask you if you recognize Identification Number "2"?

A. This is an aerial photograph of Fairbanks and the area surrounding Fairbanks.

Q. Do you know when it was taken?

A. It was taken May, 1948.

Q. Do you know by whom it was taken?

A. It was taken by Reuel Griffin's Studios.

Q. Do you know whether Reuel Griffin, or some employee, took it?

A. I do not know. I know he has the negative in his possession. [94]

Q. What does it purport to show?

A. It is an aerial picture showing the Fairbanks area.

Q. And does it show on it the area that is proposed to be annexed?

A. It shows the area proposed to be annexed,

(Testimony of Irving H. Call.)

as well as the area of the Fairbanks Townsite.

Q. And to which direction is one looking, looking into the picture?

A. Looking in a Southeasterly direction.

Q. And is that different from the direction looking into the picture in Petitioner's Identification Number "1"?

A. Petitioner's Identification Number "1" is looking in the area in a Southwesterly direction.

Mr. Clasby: We move the admission of Identification Number "2" at this time, also.

Mr. Hurley: We object to it; incompetent, irrelevant and immaterial. No proper foundation laid. Not properly identified.

The Court: It is the same as the other one. Not properly identified; nothing to show that it is a correct representation of the area as it appeared at that time—that the photograph was taken.

Mr. Clasby: I think I can get the photographer, so I will identify it further with him.

Q. Now, Mr. Call, do you know whether in this area proposed to [95] be annexed there are any schools?

A. There are no schools, to my knowledge.

Q. Are there any commercial outlets such as grocery stores, drug stores and things of a service nature?

A. None, to my knowledge.

Q. Is there any fire department operating in the area proposed to be annexed?

A. Not that I know of.

(Testimony of Irving H. Call.)

Q. Now, could you tell us what services the City of Fairbanks is ready to offer, or has to offer to the area to be annexed when it is taken within the City?

Mr. Hurley: I object to that as incompetent, irrelevant and immaterial. Calling for a conclusion. No proper foundation laid.

The Court: Objection overruled.

Mr. Hurley: Nothing to show the Council has ever taken any action to provide for the area that is proposed to be annexed.

A. The City of Fairbanks operates a Police Department, Fire Department, Public Works Department, as well as a general department of the city government which would be available for that area.

Q. Does that include Public Health Service?

A. Public Health Service.

Q. The City also operates a Public Library?

A. Operates a Public Library.

Q. Does it operate a street department, with graders and equipment for maintaining streets?

A. That is part of the Public Works Department. Complete survey and highway crews.

Q. I see, and isn't it true, also, that the Town of Fairbanks has, or generates utility—electric light, heat, a program for the development of water to be available for the proposed area?

Mr. Hurley: Same objection; incompetent, irrelevant and immaterial. No proper foundation

(Testimony of Irving H. Call.)

laid; calling for a conclusion; not the best evidence; nothing to show the City authorized to do it.

The Court: Objection overruled.

A. The City is in the process of developing a city program which will provide steam, water, electrical services to the City inhabitants and the outlying areas.

Q. This area proposed to be annexed has available to it at the present time electricity?

A. Yes.

Q. And the municipally owned service does extend its telephone?

A. The telephone system, under lease and operated by the municipality, extends telephone service to that area.

Q. And for many years past the City Fire Department, on call, has gone in there, has it not?

A. It has.

Q. And likewise, in case of emergency after the Marshal's Office is closed, the City Police, even though it is outside their jurisdiction, have gone in, have they not?

A. They have on emergency cases where it was burglaries have happened during the night time. They had made runs out there on no authority but as a general protection organization they have done that.

Q. Is there any other service community, and by service community I mean business section, affording people access to stores handling dry goods,

(Testimony of Irving H. Call.)

groceries, meat markets, beauty parlors, drug stores, etc., that is used by the area sought to be annexed, except Fairbanks?

A. Fairbanks is the only area. That is, the business area is the only area that maintains business houses for the general public. The only other location is South Fairbanks, which is just beginning to develop across the Town of Fairbanks, away from the area proposed to be developed.

Q. Do you know of the proposed installation of a school in the area sought to be annexed?

A. The City depends an awful lot on its parochial school to supplement the regular city system, and during last Fall and the early part of this year the city has set aside an area for the parochial school adjacent to the tower at Weeks Field. That area is not available until after the [98] airport stops. It is my knowledge that the Catholic Church or School has taken an option on land owned by Slater, or immediately in the Northerly part of the area to be annexed.

Q. And have they made extended efforts to find a location as close as possible to the center of town?

A. At one time they were interested in obtaining property on South Cushman around 16th Street, I should judge, and they have tried within the incorporated city of Fairbanks and in the north addition. I have been given to understand during our conferences with them, while they were considering location in the city limits, that they would prefer

(Testimony of Irving H. Call.)

being located in the Northerly section of Fairbanks.

Q. And is this location that they were finally able to get, out in the area represented by Plaintiff's Identification "1" of the series of Army buildings, or the buildings you testified to belong to the United States Government, Slater Camp?

A. It is in that area; yes, sir.

Q. And is that as close as they could get to the center of the area of population—— (interrupted).

Mr. Hurley: We object to that; calling for a conclusion; no proper foundation laid to show the witness qualified.

The Court: Objection sustained.

Mr. Hurley (Continuing): ——as to show what those people were qualified to do in purchasing land or building a school.

Mr. Clasby: I believe that is all. [99]

Cross-Examination

By Mr. Hurley:

Q. I believe you said that the area that is used for industrial purposes figured about thirty per cent of the total area proposed to be annexed?

A. That is right.

Q. Did you figure that up?

A. I figured it roughly from the map which was available, and I figured there was about, approximately fifty acres in the total of 150 acres in the area.

Q. And how much of that belongs to the United

(Testimony of Irving H. Call.)

States Smelting, Refining and Mining Company that is proposed to be included?

A. That would be about—well, I didn't look at the deeds or true maps which showed the boundary lines. One is an amended survey and another a survey. The latest one I have shows approximately seventeen acres.

Q. On that side of the road?

A. On the left hand side of the Steese Highway, as you go out.

Q. How much on the other side where those houses are?

A. It is about fourteen acres.

Q. About 14. And on this area on the left hand side of the road, there is a power house, is there not?

A. Yes, there is.

Q. And there is a couple of garages and an office building? [100] And they use this land solely for—in connection with their mining operations? There is no residences there?

A. There is no residences in that area.

Q. And it is used in connection with their mining operations, as far as you know?

A. It is used partly, I will say the majority of it is used for their mining operations. They do sell electricity to Fairbanks and the other area as a sub-contractor through the Northern Commercial Company.

Q. You mean they sub-contract?

A. They sell electrical energy to the Northern

(Testimony of Irving H. Call.)

Commercial Company, who redistributes it to the city.

Q. And they have their own water?

A. Their own water.

Q. And their own sewer?

A. Their own sewer.

Q. And their own electric lights?

A. Their own electric lights.

Q. And they sell it to the Town of Fairbanks through the N. C. Company?

A. That is correct.

Mr. Hurley: That is all.

Mr. Clasby: That is all.

(Whereupon, Mr. Irving H. Call was excused as a witness.) [101]

CLARA M. ERICKSON

having previously been duly sworn, was recalled as a witness on behalf of the Petitioners and testified as follows:

Direct Examination on Recall

By Mr. Clasby:

Q. You have been sworn this morning, Mrs. Erickson. During the recess have you examined the registrations in your office? A. Yes.

Q. To determine the exact number of persons who registered claiming title to properties in the area purported to be annexed?

A. Yes, I have examined the files.

Q. And have you run a total again on the total

(Testimony of Clara M. Erickson.)

number of persons in that area who have registered?

A. Yes, I have run a total, throwing out those that would have no bearing, and the registered owners, as of November 9, were 207.

The Court: How many?

A. Two hundred seven.

Q. And then have you again examined the petition on file here to check that? A. Yes.

Q. As against the registrations? [102]

A. I have checked the petition against the registered owners.

Q. And how many persons—how many names have you found on the petition that are registered owners within the area to be annexed?

A. The registered owners who have signed the petition are 106.

Q. One hundred and six? A. Yes.

Q. Of that 106, it includes Jack Wilbur, does it not? A. Yes.

Q. Alden Wilbur, rather?

A. Alden Wilbur.

Q. So there is one of those in the total of 106 that has registration showing a contract of sale?

A. Yes.

Mr. Clasby: I have no other questions.

Cross-Examination on Recall

By Mr. Hurley:

Q. Did that leave off all those that I asked you about this morning? A. Which?

(Testimony of Clara M. Erickson.)

Q. All these different ones that signed the petition and whose names did not appear up there in the Land Office?

A. Yes, that leaves off all those who haven't put in a [103] registration.

Q. Now, what did you mean by—you said there was 207. That included all that had any bearing on the case. What did you mean by that?

A. Mr. Heath, who transferred a little too late and was included, is taken out and I think it was owing to the fact I didn't understand exactly what was required that I had more names than should have been, so in checking back on the registrations the ones that were taken out that shouldn't have been there.

Q. How many were those that were taken out that you say shouldn't have been there?

A. Well, I don't know. I just didn't bring them. Only from the petition and from the list of property owners in that area.

Mr. Hurley: I see. That is all.

Examination by the Court:

Q. Now, this 207 includes everybody who said he was an owner and everybody who claimed that he had a contract of sale or mortgage, does it?

A. Yes, that put in a registration either starting a contract of sale, or owner.

The Court: That is all.

(Testimony of Clara M. Erickson.)

Redirect Examination on Recall

By Mr. Clasby: [104]

Q. The only one who is registered claiming to hold under a contract of sale is Alden Wilbur, is that correct?

A. That is.

Q. That is, whose registration shows he is claiming under a contract of sale?

A. That he is claiming under a contract of sale.

The Court: How about mortgage? Do you have any under that in that 207, holding under a mortgage?

A. They made no statement whether it is a mortgage or not.

Q. You have no declaration filed as to whether they had a mortgage on the piece of land?

A. No, I have no declaration filed claiming a mortgage on any piece of land.

Mr. Clasby: That is all. Will you step down, please?

(Whereupon, Mrs. Clara M. Erickson was excused as a witness and left the witness stand.)

Mr. Clasby: If the Court please, I would prefer to further identify these photographs with Mr. Griffin, who isn't here just yet, and at this time, other than that, I am ready to rest, and I am willing to rest now, with the privilege, if counsel will grant it, of putting Mr. Griffin on for further identifying the photographs. Oh, here he is now. Excuse me a moment. (Pause, while Mr. Clasby talked to Mr. Griffin.)

REUEL GRIFFIN

being called as a witness on behalf of the petitioner, was duly sworn and testified [105] as follows:

Direct Examination

By Mr. Clasby:

Q. Would you state your name, please?

A. Reuel Griffin.

Q. Are you a resident of Fairbanks, Mr. Griffin.

A. Yes, sir.

Q. How long have you lived in or about Fairbanks? A. About five years.

Q. And are you familiar with Fairbanks and the areas around Fairbanks? A. Yes, sir.

Q. Have you had occasion to observe them several times from the air? A. Yes, sir.

Q. Now, I will hand you Plaintiff's Identification Number "1" and "2," and ask you if you know what those are?

A. These are pictures that I took about a year ago, at the time of the flood. I believe it was the latter part of May.

Q. 1948? A. Yes, sir.

Q. And what are the pictures of? What do they represent?

A. Well, they are both of the City of Fairbanks and surrounding area, showing the Chena River running through [106] town.

Q. Are they taken from the air?

A. Yes, sir.

Q. Taken by you, personally?

(Testimony of Reuel Griffin.)

A. Yes, sir.

Q. Do they truly represent the Town of Fairbanks and the surrounding area as it existed in May of 1948?

A. Yes, sir.

Q. I notice that Exhibit Number—Identification Number “1,” looking into the picture, you are looking almost South, and in the far distance of the picture is the Tanana River, is that correct?

A. That is right.

Q. And in the immediate foreground is Noyes Slough?

A. Yes.

Q. Identification Number “2,” in the immediate foreground is the Railroad Reserve and it is looking East, or in an Easterly direction, is that correct?

A. Yes, that is a Southeasterly direction.

Q. And the middle and distance of the photograph on the left is the Army Air Base, is that correct?

A. Yes, sir.

Q. And both those photographs truly represent Fairbanks and the surrounding area as of May, 1948?

A. Yes, sir. [107]

Mr. Clasby: We ask they be admitted.

Mr. Hurley: Same objection.

The Court: Objection overruled. They may be admitted.

Clerk of Court: Identification Number “1” is Petitioner’s Exhibit “A,” and Number “2,” is “B.”

(Petitioner’s Identification “1” admitted in evidence as Petitioner’s Exhibit “A.”)

(Testimony of Reuel Griffin.)

(Petitioner's Identification "2" admitted in evidence as Petitioner's Exhibit "B.")

(Whereupon, Mr. Reuel Griffin was excused as a witness and left the witness stand.)

Mr. Clasby: We rest.

Mr. Hurley: We move at this time, on behalf of the Protestants United States Smelting, Refining and Mining Company and Charles Slater—I desire to move for a non-suit and ask that the Petition be dismissed for the reason that the petition alleges that there are 282 owners of substantial property interests in land or possessory rights in land or improvements upon land in the Territory above described, and sought by this petition to be annexed to the Town of Fairbanks, Alaska. We admit that and allege that there are more than 310 owners.

Now, the statute says that a petition must be filed with a majority of the owners of substantial property interests in land or possession in land or improvements upon land within the proposed territory. Now, they have proven that there were [108] 106 people who signed this petition who claimed to have a substantial property interest in land within the area, but according to their own allegations which we admit, of 282, although we do say there is more than 310, there would have to be 142 signers on the petition who were qualified signers as owners of property—substantial property rights or interest in land proposed to be annexed.

Now, they made no attempt to show that they have the required number. The petition, itself, shows that there are 149 signers, and only 106 of these have been shown to have any interest of any kind in property interest in the land proposed to be annexed. Now, on cross-examination I have shown that there are at least 28 who do not have anything recorded in the Land Office to show that they claim any substantial right in land, that they are either owners, lessees or are claiming or holding under lease or contract of sale, so they have entirely failed to prove a majority which they allege. When they allege the number and which they say have signed the petition, they have made no attempt to show that there is a majority of the 282 owners of substantial property interest whom they say have a right to sign the petition in the proposed area. Now, there is nothing that I know of in the law that says under a section like we have here that all they have to do is to file a petition and say that they have got 53 per cent of the people qualified to sign it.

It says in the law "a petition signed by a majority of the owners of substantial property interests in land or possessory rights in lands, tidelands or improvements upon land or tideland within the limits of the territory so proposed to be annexed, and stating the number of inhabitants therein, as well as the number of owners of property therein situate. And they shall file such a petition in the District Court." Well, now, they allege that, and they allege the number who have the right to sign and they allege that 53 per cent have signed.

Now, the burden of proof is certainly on them to show at least by some kind of evidence that these people that signed the petition were qualified, but they come in and show that 106 signed that they claimed were qualified to sign, but their petition shows that they had to have 142, according to their own allegations, and at least 155, according to our allegations—our Affirmative Defense, so it seems to me there has been a total failure of proof. I think a non-suit should be granted.

Mr. Clasby: May it please the Court, while it is true that the petition alleges there are 282 owners of substantial property interests in the area sought to be annexed, that was a matter we must prove, and we brought in the best evidence we could to prove our allegations. Our allegation was in error, and we proved the number of owners of substantial property interests within the area proposed to be annexed, and proved it to be 207. It went in without objection from any source, insofar [110] as constituting an amendment to the petition; as far as that is concerned, it would constitute an amendment to the Petition. Now, we are relying upon the registrations as showing what the 100 per cent is, and that figure, according to the testimony, is 207. Now, the Code says: "Those owners of land within the limits of the territory sought to be annexed, who have filed a statement of their ownership in the United States General Land Office in the District in which the land is situate, in compliance with Chapter 49 of the Session Laws of Alaska, 1945,

shall be presumed to be the owners of substantial property interests in land or possessory rights of land, tidelands or improvements upon land or tidelands within the limits of the territory proposed and sought to be annexed in the absence of a clear showing to the contrary.”

Therefore, according to that section of the Code, the total number of the persons having property within the area, who have registered them, are those owners of substantial interests in property which are to be considered in testing whether or not this petition is sufficient. That number, as I have said, is 207, and we have shown by affirmative testimony that the petition is supported by 106 of those persons, and it is obvious that that is a majority of those persons who are, according to this section, the persons owning substantial interest in property within the area sought to be annexed. They are presumed to be the ones, and the statute does leave it up to the [111] defense on a clear showing that there are others; to have others counted, but until that is done, why it doesn't seem to be a burden of proof upon the City, or upon the proponents of this annexation. This statute gives the description of what shall be called the one hundred per cent.

Mr. Hurley: If the Court please, all that part of the statute does is to go ahead and say that when they have registered in the Land Office, it shall be *prima facie* evidence of ownership, but it is not conclusive. That, in itself, is not conclusive, and

they cannot come in after they allege 282 qualified and we admit that and allege that there are 310, they can't come in and say because they come in and show that by prima facie evidence there is 107, and say we have consented to that being the number. We never consented to anything. We admit—they allege it and we admit it, and they are bound by the allegations of their Complaint, and they never asked to amend. They never even asked to amend their Complaint to change the claim it was necessary for them to have 142, and they come in with their petition with some 148 names on it, and now they say that these people they had sign this petition had no right to sign. I can't understand their theory, your Honor. I admit a lot of them didn't have, but I don't admit there wasn't at least 103 or 104 of them, or even more than that; according to our figures they had to have 155 signers to have a valid petition. People that we have checked on, and know have valid [112] property interests in land and they are entitled to vote, or were entitled to sign the petition.

The Court: Well, their allegations were 282 owners of substantial property interests. Why, naturally, it is up to them to prove that. The fact that they showed there were 207 who registered, shows that there were that many that registered, but it doesn't show that there are others who owned interest in the area and who have failed to register, so the motion is well taken and will be granted. The petition is dismissed. [113]

United States of America,
Territory of Alaska—ss.

I, Margaret M. Wilkins, of Fairbanks, Alaska, hereby certify:

That I am the Official Court Reporter in the District Court for the Territory of Alaska, Fourth Division; that I attended the trial of the cause entitled "In the Matter of the Annexation of Certain Lands Known as Slaterville, Garden Island, and North Fairbanks. To: The Town of Fairbanks, Alaska, a municipal corporation," Number 6032, at Fairbanks, Alaska, on May 23, 1949, and took down in Stenotype the testimony given and proceedings had thereat; that I thereafter transcribed said Stenotype notes, and the foregoing pages, numbered 1 to 75, both inclusive, comprise a full, true and correct statement and transcript of such testimony and proceedings, to the best of my ability.

Dated at Fairbanks, Alaska, this 18th day of July, 1949.

/s/ (MRS.) MARGARET M.
WILKINS,
Official Court Reporter.

[Endorsed]: Filed July 18, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF THE DISTRICT COURT TO TRANSCRIPT OF RECORD

I, John B. Hall, Clerk of the District Court for the Territory of Alaska, Fourth Judicial Division, do hereby certify that the foregoing, consisting of 135 pages, constitutes a full, true, and correct transcript of the record on appeal in Cause No. 6032, entitled In the Matter of the Annexation of Certain Lands known as Slaterville, Garden Island and North Fairbanks, To: The Town of Fairbanks, Alaska, a municipal corporation, and was made pursuant to and in accordance with the Praeceptum of the Petitioner and Appellant, filed in this action, and is the return thereof in accordance therewith, and

I do further certify that the Index thereof, consisting of page "a," is a correct Index of said Transcript of Record, and that the list of attorneys, as shown on page "b," is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$13.90 has been paid to me by counsel for Petitioner and Appellant in this action.

In Witness Whereof, I have hereunto set my hand and affixed the seal of this Court this 30th day of August, 1949.

[Seal] /s/ JOHN B. HALL,

Clerk, District Court, Territory of Alaska, 4th Divn.

[Endorsed]: No. 12348, United States Court of Appeals for the Ninth Circuit. Town of Fairbanks, Alaska, a municipal corporation, Appellant, vs. United States Smelting, Refining and Mining Company, Inc., and Charles Slater, Appellees. Transcript of Record. Appeal from the U. S. District Court for the Territory of Alaska, Fourth Division.

Filed September 9, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12348

In the Matter of

The Annexation of Certain Lands known as
"Slaterville," "Garden Island" and "North
Fairbanks."

To: The Town of Fairbanks, Alaska, a Municipal
Corporation.

APPELLANT'S STATEMENT OF POINTS TO
BE RELIED ON AND DESIGNATION OF
PARTS OF RECORD TO BE PRINTED

Comes Now, appellant and states that for the purpose of this appeal it intends to rely upon the points set out in appellant's assignments of error; and appellant designates as necessary for considera-

tion of this appeal the entire record transmitted to the Clerk of this Court pursuant to appellant's Praeceptum.

Dated this 28th day of October, 1949.

/s/ CHAS. J. CLASBY,

Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 31, 1949.
